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greater volume of sales than the New York retailer. The New York retailer, however, enjoys a higher mark-up than the Washington, D.C. retailer. Even before World War II volume dealers maintained that retailers could operate profitably on an 18 percent margin when the industry and trade associations were claiming that retailers needed between 30 percent and 40 percent.[76] If there were lower margins in New York State, it might have fewer package liquor stores. One publication maintains that the field (retailing of liquors nationally) remains overpopulated.[77]

3. The Wholesaler

The number of liquor wholesalers has been declining and this has been hailed by the trade. It is alleged that more than 90 percent of the business is now handled by fewer than 1,000 wholesalers.[78] Once the wholesaler was the weakest of the three trade levels; he has now increased his power. This is reflected in what has happened to his margins in New York State market. In August, 1950, wholesalers had markups of approximately 13 percent and 13 years later, approximately 23 percent.[79]

Wholesalers in New York do not have the freedom to set prices for branded spirits while those in Washington, D. C. theoretically do. The term "theoretically" is used since distilled spirits in Washington, D. C. are marketed by monopoly wholesalers, that is, brands are wholesaled by one firm and only one firm. This system is criticized by retailers as limiting the degree of competition. In this context then, wholesalers probably are akin to controlled houses. The ability of the distiller to disfranchise a wholesaler leaves the former with the power in the market.

Since the price at which wholesalers may sell their branded products in New York are set by the distiller, price inducements to retailers to favor one brand over another, as noted earlier, are the result of distiller decisions in New York. Yet, wholesaler interests

76. *Federal Trade Commission Report on Resale Price Maintenance* (1945) p. 359.
77. *The Liquor Handbook, 1960,* p. 56.
78. *The Liquor Handbook, 1962,* p. 68.
79. Seagram's 7 Crown, for example, cost the New York wholesaler approximately $33.75 in August, 1950, and he sold it for $38.05, a mark-up of 12.8 percent; in August, 1963, the figures were $36.60 and $45.19 respectively, a mark-up of 23.5 percent.

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may be jeopardized by local market conditions, e.g., private label merchandise may make inroads on his volume, and he does not have the price control with which to fight.

4. The Private Label

According to the trade press the private label liquor is a growing factor in the market.[80] This development could have been predicted. The private brand has emerged in other industries where resale price maintenance has attempted to protect distribution margins. Private label merchandise is often produced by the manufacturers of branded merchandise. And this is true in liquors.[81] It offers the retailer a chance to develop a brand loyalty to a quality product that carries neither the heavy promotional expense nor large distribution margins.

Distillers are alleged to be concerned about ". . . the growing private-label problem" and ". . . high volume wholesalers who stimulate the demand for 'private labels'." Wholesalers argue that ". . . there is a genuine, largely non-competitive demand for low-priced private labels among low-income consumers, and cite their indisputable cost problem as justification for exploiting every market opportunity."[82]

Some retailers, department stores and independent dealers in New York City, have a substantial portion of their business in private label liquors.[83]

How the distillers intend to deal with the threat of private label merchandise is not clear although many tactics are possible. For example, they have successfully sought additional fees for private label liquors in New York State,[84] they have applied pressures on

80. Beverage Media, August, 1963, p. 15 and *The Liquor Handbook 1963*, p. 69.

81. *Report of the Federal Trade Commission on Resale Price Maintenance*, (1945), p. 345.

82. *The Liquor Handbook, 1963*, p. 69. The August 1963 issue of Beverage Media reported that the president of Joseph E. Seagram & Sons warned that ". . . brand-name manufacturers who produce their merchandise under private labels are committing economic 'suicide' as well as undermining American industry" (p. 21), and at the same time the vice-president of Esbeco Distilling Corporation, a producer of private label liquors, ". . . complained to the anti-trust division of the Department of Justice that several unnamed distillers are attempting to destroy the private label business" (p. 85).

83. *E.g.*, R. H. Macy and Nussbaum (61 Cortlandt St.).

84. Rule 107-a of the Alcoholic Beverage Control Law, as amended by ch. 204, Laws of 1963. A registration fee of $100 for each brand of liquor is now required. This fee is paid by the brand owner.

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small producers of private label merchandise,[85] they have carried on a public relations campaign against private labels,[86] and they are now using price tactics.[87]

The turn to overt price cutting perhaps reflects intensified "wheeling and dealing" that has always plagued liquor markets.[88] The editors of *The Liquor Handbook* took note of this fact when they wrote that

> "The typical open state has all the virtues and ills of private enterprise: opportunities for the 'little man' to 'make good' * * * the chance to make a success of a little-known brand, but the temptation to do so by cutting prices drastically, 'wheeling and dealing' and creating market disorder." [89]

Private brands tend to hold larger portions of the volume markets under resale price maintenance than they do when fair-trade is not operative. One further point is worth noting. Retailers of private label merchandise in Washington, D. C. do not rely on the price cutting of branded merchandise to attract customers. *Milstone's Acme Liquor* advertises private labels exclusively as does *Central Liquor*.[90] Other stores, *Larimer's* and *Sir*, noted for their low liquor prices, do feature national brands in their advertisements.[91]

Let us now turn to the matter of price differentials between markets with resale price maintenance and those without.

5. Price Differentials

The battle of the surveys between proponents and opponents of resale price maintenance is not totally inconclusive. This author concluded some ten years ago that "In areas where mandatory resale price maintenance is in effect, whisky prices are higher, more uniform, and more stable than prices in areas having no resale price

85. *Beverage Media*, August, 1963, p. 85.
86. *Ibid.*, p. 21.
87. *Ibid.*, p. 15.
88. *The Liquor Handbook, 1958*, p. 35; *The Liquor Handbook, 1963*, p. 66.
89. *Ibid.*, p. 70.
90. Washington Post, September 4, 1963.
91. *Ibid.*

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maintenance."[92] Other scholars have reached substantially the same conclusions.[93]

There is little published on effective prices in non fair-trade areas. Some of what is published is suspect. For example, *The Liquor Handbook* publishes retail sales prices of leading brands in its annual issue but these are obtained from the distillers who have an interest in minimizing the degree of price competition.

The price of $4.57 for *Seagram's 7 Crown* in the Washington market is some sixty cents too high. In general, Washington, D. C. prices are known to be about one dollar or more below New York State prices. New York State and the District of Columbia have

TABLE 14

Retail Prices of the Nation's Leading Twenty Brands of Distilled Spirits, New York State and Washington, D. C. August — September, 1963

Brand	Prices Per Fifth: Washington, D. C.*		New York State†
Seagram 7 Crown	$3.49		$4.99
Seagram's V.O.	4.99		6.65
Canadian Club	4.99		6.55
Old Crow	3.39		5.45
Imperial	3.18		4.50
Jim Beam	3.49		5.10
Calvert Reserve	3.49	Calvert Extra	4.99
Schenley Reserve	3.49		4.99
Early Times	3.79		5.45
Ancient Age	3.59		5.95
Corby's Reserve	2.99		4.49
Fleischmann Preferred	3.18		4.55
Ten High	2.99–3.18		not marketed
Old Taylor	4.29		5.95
Cutty Sark	5.59		7.11
Four Roses	3.69		5.19
Kessler	not marketed		not marketed
J & B	5.95		7.09
Old Sunnybrook	3.29		not marketed
Kentucky Gentlemen	3.19–3.39		4.79

Sources:

* Information supplied to the Moreland Commission by industry member.

† *Beverage Media*, August, 1963, pp. 2-B1 to 10-B1.

92. Harold L. Wattel, *op. cit.*, p. 600.

93. See Charles F. Stewart, *Mandatory Resale Price Maintenance of Distilled Spirits in California*, Journal of Marketing, April, 1954, and Charles H. Hession, *The Economics of Mandatory Fair Trade*, Journal of Marketing, April, 1950.

[fol. 94]
similar excise taxes—$1.50 per wine gallon in addition to the $.20 per fifth use fee which New York imposed in 1963.

What may not be generally recognized is that private label spirits tend to be lower in Washington, D. C. than those in New York State. Of course, inter-label comparisons are difficult since an equation of quality is almost impossible. A sampling of private label spirit blend prices in New York State reveals that a fifth may be had as low as $3.69; there may be lower prices. In the District a quart may be purchased for $3.39 and many national brands sell for as low as $2.85 a fifth. Bonded bourbons in New York start as low as $4.79 but in Washington as low as $3.19. Straight bourbons may be purchased in New York for as little as $4.59 per fifth but in Washington they could be had for as low as $2.77. A low price for private label scotch in New York is $4.59, while in Washington scotch sells for as low as $3.59. But since the avowed purpose of resale price maintenance in New York State has been to prevent price competition in liquors, it is not surprising to find prices in New York State higher than those of Washington, D. C. In fact, according to *The Liquor Handbook,* they are among the highest in the nation.[94]

There is strong evidence in the table of prices found in *The Liquor Handbook, 1963* (p. 67) that prices for distilled spirits are higher in fair-trade states than in non-fair trade states. But the industry is not likely to argue the point; one of the values of fair-trade, say its advocates, is that the absence of price wars and the presence of higher prices discourage irresponsible consumption.[95]

Despite the relatively high price level for distilled spirits in New York State, price conscious consumers may elect to pay less for their liquor if they are willing to accept the private label and

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94. *The Liquor Handbook, 1963,* p. 67.

95. The former president of Joseph E. Seagram & Sons, Inc. said,

> ". . . farseeing members of our industry including a number of State Liquor Authority officials, have sought to implement general fair trade regulations with laws designed to use fair trade as a social welfare instrument which would prevent recurrence of such previous evils as indiscriminate price wars which tore down the fiber and substance of State control. . . .
>
> "I believe we can all testify to its efficacy (effective fair-trade) in providing for the orderly distribution of alcoholic beverages and in fostering temperance and promoting social control."

Seagram Puts it in Writing, p. 2 (pamphlet, no date).

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non-national brands. This is not to imply that the major distillers do not attempt to provide for him. There are price lines for distilled spirits as for many other products. Table 15 lists these price lines for spirit blend whiskies, representative brands, and the portions of the market they command.

TABLE 15

Price Classes for Neutral Blend Whiskey, New York State, 1963

Class	Price Range of "fifths" (New York Prices)	Distribution of National Representative Brands Purchases, 1962	Representative Brands
C	Under $4.01	7.5%	Mr. Boston Pinch
B	$4.01- 4.50	47.0	Corby's Reserve
A	4.51- 5.15	44.3	Seagram's 7 Crown
A Prime	5.16- 6.40	1.2	Four Roses

Source: The Liquor Handbook, 1963, p. 68.

Some choice does exist within the above price structure, but it is not only the range of prices which is of concern here, but the level also.

The price conscious consumer who is limited to purchasing his distilled spirits in New York State may save from fifty to seventy-five cents per fifth on his purchases by seeking out the palatable private label. If he is able to secure his liquor in Washington, D. C. (a form of bootlegging), he is able to save approximately one dollar per fifth not only on nationally branded merchandise but on private label spirits as well.

There are those who maintain that quality spirits may be secured only at a high price or that high price is always associated with high quality. They are probably unaware of the many factors which account for the price of distilled spirits. These factors include the quality of the ingredients, the alcohol content of the spirits, the age of the product, the skill of manufacture, the efficiency of production, the price policy of the distiller, the status consideration of the consumer, federal and state taxes, and the margins of the distributors.

Resale price maintenance is a key factor in determining the margins of distributors. A study of consumer purchases of spirits

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suggests that the average consumer is far from knowledgeable about spirits and cannot determine the price differences occasioned by "quality" differences. Little low priced whiskey is sold. Does this mean that the average consumer is an irrational consumer? The only element in his favor is to grant to him the possibility that he may minimize his chances of purchasing an "inferior" product by staying within the middle price lines of nationally advertised brands. If he is committed to this pattern of behavior, should he not at least be protected by price competition?

In 1945, the Federal Trade Commission found that resale price maintenance in the distilled spirits industry was aimed at the elimination of dealer price competition, the elimination of price quotations in advertising, the elimination of secret price reductions, and the development of higher gross margins. These goals seem to have been achieved in New York State. No market, however, is completely stable. Efforts to achieve these goals are to some extent thwarted by the ubiquitous undercover "wheeling and dealing", and the growth of private labeled merchandise which offers additional price choices to the consumer. Nevertheless, in New York State, liquor prices are relatively high and stable, the number of retailers has been about constant for fifteen years, and liquor retailing in general is profitable.

To return liquor to the open market is to return price decisions to each trade level to be made by independent businessmen. Lower prices for distilled spirits and perhaps heightened efficiency of distribution would result.

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V. THE DEMAND FOR DISTILLED SPIRITS

A. *Introduction*

The determinants of the demand for legal distilled spirits are many. The list includes ethnic and religious factors, the nature and stringency of control systems,[96] the availability and prices of competing goods, the degree of urbanization, advertising, and the mores governing the frequency and types of social gatherings. Even container size is a variable at times. The economist has tended to delimit his analysis to such quantifiable variables as price and income. He has tended to hold "taste" constant, a variable that covers a multitude of complex variables in this world.[97] This economic analysis, similarly, concentrates on the effect of price and income changes on the purchase of distilled spirits.[98]

The term "purchase" is chosen deliberately, although the statistics are usually collected in terms of "apparent consumption." This latter term suggests actual imbibing. Unfortunately, the data are not sufficiently refined to account for actual consumption. Sales data are not always retail sales data; they are often reconstructions of tax payments recorded as spirits enter a state or sometimes an accounting of shipments to wholesalers. There is, therefore, a problem of inventorying at wholesale, retail, and consumer levels.

Another important problem stems from the fact that sales data are generated for political subdivisions rather than economic markets. Since packaged liquor is easily transported by consumers across state lines, sales data of small political areas such as states are distorted to some degree. This is especially true for such a well known low price market as Washington, D. C. Along these lines, one can also point to the problem of transients who consume distilled spirits. If the transients reside in other states, their influence is dissolved in national data, although the local statistics remain contaminated; if the transients are foreigners, their influence cannot be

96. Effective prohibition of the production and sale of beverage spirits depresses the consumption of the legal product.

97. See Harold L. Wattel, *op. cit.,* Chapter 4 deals at length with the many variables. For example, in the immediate post-war period the introduction of television was considered a depressing influence on distilled spirits consumption because it tended to reduce attendance at night clubs.

98. There is good precedent for doing so. See A. R. Prest, *"Some Experiments in Demand Analysis,"* The Review of Economics and Statistics, February, 1949, p. 45.

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erased, and if their influence is limited to one or two local markets, the problem is intensified, as in the sales data for New York State and Washington, D. C.

Analyses of distilled spirits "consumption" are prepared, nevertheless, since government, business, and consumer groups need to know more about this aspect of our behavior.[99] These studies divide functionally into two groups, those which are based on current field investigations such as budget studies and market analyses, and those which rely for the most part on data generated from other diverse sources, such as studies which correlate income and "consumption" or expenditure data. Let us turn now to the lessons we have learned from each of these.

B. *The Market Studies*

What have we learned from market studies? Among other things, the following findings have gained currency:

1. Households which serve distilled spirits are less numerous than those which do not. The ratio is about 60% for those which do not serve, as compared with 40% for those which do.[100]

2. The percentage of households purchasing or serving distilled spirits increases as income increases.[101] One of the first postwar

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99. The need for accurate analyses is mirrored in this conflicting testimony about consumer behavior. First, the New York State Liquor Authority commented as follows on distilled spirits purchases during the liquor price wars in New York City in 1940:

> "One definite conclusion which can be drawn is that the sharp decline in prices increased consumer purchases, which were stimulated by the impression created by industry members that the reduced prices were temporary. This caused an abnormal bargain seeking demand on the part of many consumers who stocked up with liquors for future consumption."

1940 Report of the New York State Liquor Authority, p. 14.
Alfred E. Driscoll, former New Jersey Alcoholic Beverage Commissioner, in testimony to a Senate committee said:

> "Now liquor, in contrast to other commodities, is not an article which the average person saves . . . when he goes in and buys a bargain in liquor, as he thinks, is likely to consume it in a short period of time and then try to go out and buy another bargain."

Senate Judiciary Hearings on S. Res. 206, 78th Congress, 2nd Session, 1944, p. 213.

100. *Time Research Report #1204, Facts on the U. S. Market for Distilled Spirits*, p. 3.

101. In addition to studies which follow, see *The Liquor Handbook, 1957*, p. 32.

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studies in this area was executed by the U. S. Department of Agriculture, which reported the following statistics for urban families in 1948:

TABLE 16

Purchased Beverages (whisky, rum, gin, brandy, cordials) Percentage of households using and Expense per Household, United States, 1948

	Per Cent	One Week's Expenditure (dollars)
All incomes	8.0%	$.276
Under $1,000	3.8	.127
1,000-1,999	1.5	.037
2,000-2,999	3.9	.111
3,000-3,999	6.6	.243
4,000-4,999	15.6	.527
5,000-7,499	13.0	.315
7,500 and over	25.0	1.233
Not classified	10.9	.404

Source: U. S. Department of Agriculture, *Food Consumption of Urban Families in the United States (Agriculture Information Bulletin No. 132)*, p. 85.

Recent commercial market studies support these earlier findings, e.g., Daniel Starch's analysis for *Time* for 1960:

TABLE 17

U. S. Non-Farm Households Drinking or Serving Distilled Spirits* Within Income Groups, 1960

Annual Income	Drink or Serve Whiskey (Per Cent)
$10,000 and over	68%
7,000-9,999	60
5,000-6,999	50
4,000-4,999	42
Under $4,000	23

* Does not include brandy or cordials.

Source: Time Research Report, #1204, Facts on the U. S. Market For Distilled Spirits, p. 4.

3. Households with heads who hold professional or managerial jobs tend to have a higher percentage drinking or serving whiskey than those whose heads are blue collar workers. Although the studies tend not to indicate it, this finding is not surprising, since job level and income tend to move together in our society.

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TABLE 18

U. S. Households Drinking or Serving Distilled Spirits*
Within Occupation Groups, 1960

Occupation or Household Head	Drink or Serve Whiskey
Managers, Officials	60%
Professional, Technical	58
Business Owners	52
Sales	51
Clerical	47
Craftsmen	45
Operatives	40
Service Workers	34
Farmers and Farm Laborers	21
Housewives	14

* Does not include brandy or cordials.

Source: Time Research Report, #1204, p. 8.

4. The percentage of households drinking or serving whiskey tends to decline with age of household head once the head of the house reaches the age of 34 years.

TABLE 19

U. S. Households Drinking or Serving Distilled Spirits*
Within Age Groups, 1960

Age of Household Head	Drink or Serve Whiskey
65 and over	20%
55-64	33
45-54	42
35-44	48
25-34	51
18-24	40

* Does not include brandy or cordials.

Source: Time Research Report, #1204, p. 8.

5. The more dense the urban area, the larger the percentage of the population which drinks spirits. For example, it has been reported that 25 per cent of the rural population of the nation drink spirits, 50 per cent of the population of cities having a population between 2,500 and 25,000 persons, 58 per cent in areas between 25,000

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and 500,000 persons, and 73 per cent of those living in cities of 500,000 persons or more.[102]

6. According to a Gallup national survey, drinking increases with educational achievement. For example, 48 per cent of grammer school graduates, 67 per cent of high school graduates, and 71 per cent of college graduates consume alcoholic beverages.[103]

Many of these market studies also suggest that status considerations are important determinants of consumer behavior in the purchase of distilled spirits.[104] Such findings as these are useful although much of the other material uncovered in the course of the surveys relates to decisions affecting brand preferences, a matter of special interest to firms commissioning the studies.

If these survey findings are valid, the nation can look forward to an increase in the total and per capita consumption of distilled spirits. Income is expected to rise. New jobs are expected to be primarily of the "higher status" white collar variety in the future. Population will continue to increase and the "war babies" will soon swell the 25-34 age category, the one having the highest percentage of households in which liquor is served. And urbanization is expected gradually but surely to engulf most of the nation.

Before one accepts such conclusions as reliable it is plausible to compare these with other published data. To this end, then, let us review these data and the results of applying the technique of correlation analysis to the problem of distilled spirits consumption.

C. *The Published Data*

We can infer a great deal from the published data. We find that there is a segment of the market that is price conscious. The success of the private label (product with retailer's or wholesaler's label) tells us this. The industry suspects that an increasing percentage of the New York State market is being preempted by them.[105] One interesting sidelight to the private brand market picture is that in a market free of resale price maintenance such as Washington, D. C., the private label product has not disappeared. Statistics now being

102. *The Liquor Handbook, 1957,* p. 33.
103. Time Marketing Services—1961, *Liquor Customer Characteristics,* p. 8.
104. *The Liquor Handbook, 1963,* p. 58 ff.
105. There are no data but the trade "talks" about a 20 per cent figure.

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compiled by the Distilled Spirits Institute[106] suggest that these products account for about ten per cent of the market. The District's private brands are priced below private brands in New York State, but the price differential between them and national brands usually is smaller than exists in New York. (This tends to bear out the contention of the Federal Trade Commission that distillers of private label spirits exert some influence on the retail pricing of their products.)[107]

But how large is this price conscious consumer segment? From what income is it drawn? Is the success of the private label an indication that some consumers drink more spirits than others for the same expenditure or that some consumers are price conscious in order to maintain a particular and constant level of consumption at minimum cost? The answers to these questions are not to be found in the data at hand. And yet, these are important questions for analysis.[108]

Price conscious consumers, it seems, forewarned of the last federal excise tax increase from $9.00 per proof gallon to $10.50 per proof gallon on November 1, 1951, shifted the timing of their purchases. Consumers everywhere stocked up in anticipation of the price increase. Here, for example, is how the sales pattern changed in the nation in anticipation of the tax and price rise:

TABLE 20

Apparent Consumption of Distilled Spirits, United States, 1950 — 1953

	Annual Total (million wine gallons)	October	November (Per cent of annual sales)	December
1950	190.0	8.0%	9.3%	12.9%
1951*	193.8	11.6	8.2	10.0
1952	183.7	10.6	10.3	12.4
1953	194.7	9.6	10.0	11.7

* Tax increase effective November 1, 1951.

Source: Distilled Spirits Institute, *Apparent Consumpion of Distilled Spirits, Summary 1949-1958,* p. 5.

106. Distilled Spirits Institute, *Apparent Consumption of Distilled Spirits, District of Columbia Special Report, Monthly.*

107. *Report of the Federal Trade Commission on Resale Price Maintenance,* (1945), p. 346.

108. A. R. Prest wrote: "Obviously in the case of spirits and wines, for instance, it would probably be more realistic to confine the analysis to the higher income sections. Lack of data, however, prevents this." *Op. cit,* p. 44.

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The decline in consumption in 1952 and the changed pattern of consumption in the last three months of 1951 can be traced directly to the tax increase. (Retail prices tended to increase by the amount of the tax multiplied by the distribution markups. In Pennsylvania the price of a fifth of Seagram's 7 Crown rose by $0.43 although the tax increase was only $0.26. The level of all distilled spirits prices rose by $0.34 per fifth.)

In Pennsylvania, the same alterations in purchasing habits are evident. In 1950, purchases as a percentage of the year's total were as follows for the last three months: 8.0 per cent, 8.7 per cent, and 15.4 per cent. In 1951, they were 11.9 per cent, 6.7 per cent, and 12.1 per cent. By 1953, they were back to "normal" with 8.8 per cent, 8.7 per cent, and 14.7 per cent. But the question remains, "Did consumers shift to lower priced distilled spirits after the tax change?" After all, the price level rose from $3.95 in 1950 to $4.29 in 1952, an increase of almost 11 per cent.

TABLE 21

Whisky Purchases by Price Class (Fifths), Pennsylvania, 1950-1953

	1950	1951	1952	1953
Under $3.00	9.2%	8.3%	8.9%	8.8%
$3.00-$3.24	2.7	.5	.5	.6
3.25	2.6	2.1	2.7	2.4
3.50	36.1	1.4	1.5	1.3
3.75	2.5	3.2	2.3	2.0
$4.00	34.2	34.9	35.7	35.1
4.25	2.7	35.2	33.6	33.0
4.50	.8	1.2	2.1	2.6
4.75	.9	3.1	3.3	4.5
$5.00 and over	8.5	10.2	9.5	9.8
Total	100.2%	100.1%	100.1%	100.1%
Benchmark Prices:				
Seagram 7 Crown	$4.03	$4.46*	$4.46	$4.46
Haller's Special Res.	3.69	4.15*	4.15	4.15

* After tax increase.

The statistics in Table 21 show that consumers continued to purchase their favorite brands despite the price increase. The price class $3.50-$3.74, which accounted for approximately 36 per cent of whisky purchases before the tax increase, accounted for less than two per cent after the tax increase. The price class $4.00-$4.49, which accounted for almost 37 per cent of whisky sales before the tax change, accounted for almost 70 per cent after the change. Brand

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loyalties apparently were maintained despite the price change. It cannot be claimed that a lack of choice forced consumers into this pattern. For spirit blends alone, the following price ranges prevailed: 1950—$2.89 to $4.89 per fifth; 1951 (after the tax increase)—$3.29 to $5.31; 1952—$3.25 to $5.31; and in 1953—$3.43 to $5.31. The change in total consumption, which also interests us, is dealt with within the framework of the correlation analysis for consumption, income, and prices to be discussed later.

What other evidence is available on this subject? Often, the low prices and high apparent consumption of such areas as New Hampshire and the District of Columbia are cited as conclusive proof that the demand for liquor is price sensitive. Such variables as transient population and out-of-state purchases are ignored. (A fuller treatment of inter-area differences is provided below in the form of a correlation analysis taking into account income as well as price.)

If we turn to Pennsylvania, once again we find that taste changes[109] developed rather steadily through the entire postwar period. What cannot be ascertained, however, is the degree of change that might have taken place had income and price not changed at the same time.

In Table 22, the reader will find data indicating that proportionally, sales of neutral blend whiskies, the cheaper product, decreased; and sales of straight whiskies, the more expensive product, increased, in spite of a rising price level for distilled spirits in Pennsylvania. On the other hand, distilled spirits and whiskies apparently lost ground at the time of the federal tax increase in 1951. One could argue that the drop in each case in 1952 below the level of 1950 stemmed from the purchases for inventory that swelled the sales figures of 1951.

For some, price is an important factor shaping their consumption time preferences. Taste factors, on the other hand, are clearly reshaping the overall market as neutral blends give way to straights. But do taste and price combine to depress the influence of whisky as distilled spirits sales increase? What role does income play in these changes?

Let us now turn our attention to the influence of income on demand patterns. Field studies, it was noted above, found income to have a strong influence on the consumption of distilled spirits.

109. Traditional economic analysis assumes no change in tastes during the period of analysis. Statistical techniques are not adequate for this problem.

TABLE 22

Prices and Market Shares of Selected Distilled Spirits Types, Pennsylvania, 1947-1962

Year	Average Price of Distilled Spirits				Percentage of Wine-Spirits Market Held By				
	All	Neutral Blends	Straight Bourbon	Top Ten Brands	Distilled Spirits	Whisky	Neutral Blends	Straight Bourbon	Top Ten Brands % of Dist. Sp. Sales
	(fifths)				based on gallon sales		based on case sales		
1947	$3.95	$3.61	$4.93	$3.83	56.21%	49.35%	47.55%	0.22%	54.71%
1948	4.03	3.76	4.83	3.85	51.66	45.94	44.73	.38	61.32
1949	4.01	3.72	4.32	3.72	49.47	44.07	42.90	.55	62.10
1950	3.95	3.69	4.23	3.87	49.97	44.62	42.33	.83	60.57
1951	4.02	4.08	4.72	4.30	52.03	46.35	43.79	1.14	59.20
1952	4.29	4.02	4.63	4.35	49.11	43.40	40.74	1.34	58.13
1953	4.30	4.06	4.70	4.36	50.22	44.23	40.01	1.48	55.86
1954	4.31	4.06	4.72	4.38	49.20	43.10	37.98	1.76	53.79
1955	4.33	4.08	4.74	4.39	50.96	43.91	37.73	2.15	52.31
1956	4.38	4.14	4.81	4.40	53.67	45.64	38.25	2.75	50.71
1957	4.42	4.19	4.83	4.49	54.63	45.76	37.37	3.40	48.75
1958	4.42	4.18	4.86	4.45	55.31	46.26	36.80	4.31	47.39
1959	4.42	4.18	4.90	4.48	56.67	46.70	36.19	5.53	46.62
1960	4.56	4.32	5.09	4.66	56.01	45.98	34.88	6.33	46.86
1961	4.56	4.31	5.08	4.66	56.25	45.22	34.35	6.52	45.58
1962	4.51	4.27	4.97	4.64	57.22	45.22	33.98	6.50	44.84

Source: Pennsylvania Liquor Control Board, *Annual Store Sales Analyses.*

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For the nation as a whole, personal expenditures for alcoholic beverages as a percentage of real disposable personal income has declined in the postwar period from a high in 1947 of 3.94 per cent to a low of 2.89 percent in 1959. In 1962, the percentage stood at 2.92.

Since personal saving in this period increased from $4.7 billion in 1947 to a high of $29.1 billion in 1962, it would appear that consumers might have spent more of their income on distilled spirits if they were so inclined. The decline in the percentage of real disposable personal income spent on alcoholic beverages and distilled spirits in particular is not to be explained in terms of price increases for these products. It is conceded that if savings, in effect, are institutionalized, that is, they tend to be an "expenditure" rather than a residual, this argument is weakened somewhat. It is also true, as mentioned earlier, that the distribution of income may have an important role to play in this analysis. But on the face of it, consumers seem to have the income necessary to overcome price increases so that they need not deprive themselves of their customary quantity of spirits.

The statistics of expenditures for alcoholic beverages in Pennsylvania (wine and distilled spirits only, not including the cost of service for beverages sold by the drink) indicate much the same pattern as for the nation. Expenditures declined as a percentage of real personal income after the war until the middle fifties, when the figure began to rise. The data are presented in Table 24.

In New York State, we find that real income per capita rose 7.2 per cent in the period 1957-1962 and per capita apparent consumption of distilled spirits rose 12.7 per cent. If the relationship were to hold for the future then per capita apparent consumption is likely to increase at the approximate rate of 2.5 per cent annually as real per capita income increases some 1.4 per cent annually. At these rates, per capita apparent consumption of distilled spirits in New York State would not reach the 1946 peak of 2.11 wine gallons until close to 1970.[110]

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110. What would such an increase mean in terms of drinks? In 1960, per capita apparent consumption is recorded at 1.81 wine gallons which translates into 232 ounces per person. Since only a portion of the population is adult, this figure can be increased to 359 ounces per adult (over 21 years of age). An increase of ten per cent in apparent consumption turns out to be an increase of less than one ounce per week per adult person in New York State. The reader should be reminded that apparent consumption data for New York do not separate out the consumption of the transient population.

TABLE 23

Expenditures for Alcoholic Beverages and Real Disposable Personal Income, United States, 1947-1962

1	2	3	4	5	6	7	8
		Expenditures for Alcoholic Beverages			Expenditures as Percentage of Real Disposable Personal Income		
			Personal and Business			Total	
Year	Real Disposable Personal Income (1957-9 dollars) (billion)	Personal Alcoholic Beverages	Alcoholic Beverages (million)	Distilled Spirits	Personal	Alcoholic Beverages (Per Cent)	Distilled Spirits
1947	$218.6	$ 8,620	$ 9,640	$4,500	3.94%	4.41%	2.06%
1948	225.9	7,900	8,820	3,900	3.50	3.90	1.73
1949	228.6	7,680	8,580	3,650	3.36	3.75	1.60
1950	247.9	7,790	8,790	3,870	3.14	3.55	1.56
1951	251.4	8,060	9,160	4,180	3.21	3.64	1.66
1952	258.1	8,530	9,715	4,320	3.30	3.76	1.64
1953	270.9	8,610	9,885	4,300	3.18	3.65	1.59
1954	274.5	8,500	9,830	4,300	3.10	3.58	1.57
1955	294.1	8,700	10,090	4,470	2.96	3.43	1.52
1956	309.3	8,990	10,470	4,780	2.91	3.39	1.55
1957	315.1	9,140	10,670	4,960	2.90	3.39	1.57
1958	315.7	9,210	10,760	5,020	2.92	3.41	1.59
1959	332.1	9,605	11,225	5,270	2.89	3.38	1.59
1960	339.4	9,840	11,535	5,480	2.90	3.40	1.61
1961	349.7	10,215	11,960	5,600	2.92	3.42	1.60
1962	364.7	10,665	12,515	5,940	2.92	3.43	1.63

Sources: Column 2: Calculated by author from Disposable Personal Income Series of the U. S. Department of Commerce and Consumer Price Index of U. S. Department of Labor.

3, 4, & 5: Estimates of the Office of Business Economics of the U. S. Department of Commerce.

6, 7, & 8: Calculated by author from data in columns 2-5.

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TABLE 24

Expenditures for Wine and Distilled Spirits and Real Personal Income, Pennsylvania, 1947 — 1962

1 Year	2 Real Personal Income (1957-9 dollars) millions	3 Expenditures of Wine and Spirits (millions)	4 Expenditures as a Percentage of Real Personal Income
1947	$17,681	$208.4	1.18%
1948	17,752	208.2	1.17
1949	17,796	198.3	1.11
1950	19,662	213.0	1.08
1951	19,931	226.1	1.13
1952	20,456	227.3	1.11
1953	21,615	239.4	1.11
1954	20,910	230.7	1.10
1955	22,193	238.4	1.07
1956	23,664	255.0	1.08
1957	24,005	269.4	1.12
1958	23,418	272.8	1.16
1959	24,391	279.9	1.15
1960	24,771	299.8	1.21
1961	24,900	299.2	1.20
1962	25,509	308.1	1.21

Sources: Column 2: U. S. Department of Commerce Personal Income Series, found in *Survey of Current Business,* August issues. Series deflated by U. S. Department of Labor's Consumer Price Index.

Column 3: Pennsylvania Liquor Control Board, *Annual Store Sales Analyses.*

Column 4: Column 3 ÷ Column 2.

Income is a prime factor in determining liquor consumption. Yet, as income has increased, savings have increased absolutely and relatively, while expenditures for alcoholic beverages have increased absolutely but decreased relatively. To extract the influence of price from this complex is a difficult task. Historically, correlation techniques are employed for this task.

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D. *Correlation Studies*

One of the more powerful tools available to researchers is correlation analysis. It may be used to test the dependence of one variable on one or more other variables at a point in time (cross section analysis) or through time (time series analysis). When these are used in conjunction with one another and in the last analysis contained by economic reasoning, "Briefly stated, most of the controversies spring from a failure to realize that in each and every application the hypothesis of a casual dependence has to be indicated and supported by nonstatistical considerations. As regards demand analysis, in particular, the regression analysis has to be directed by economic arguments.[111]

This is not to suggest that within these bounds there are no difficulties. On the contrary, the more progress experienced in this field, the less willing researchers are to accept unsophisticated findings. Dissatisfaction with time series analysis because of the possibility that the supposedly independent variables may themselves be linked in some systematic fashion (multicolinearity)[112] and that any one series may be feeding upon itself in some systematic fashion (autocorrelation) have pushed investigators to fashion tests to determine the existence of these and to develop solutions.[113] While the current state of the art is not perfect, researchers believe that positive benefits are to be obtained from present techniques. Of course, statistical answers in the hands of investigators may mean one thing; in the hands of policy makers, another.

Without attempting to pass on the reliability of the studies, the following findings are offered to give the reader an appreciation of the range of results that has accumulated in the literature. It should be recognized that the basic data employed and their limitations may be as responsible for the variations in findings as the techniques employed.

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111. Herman Wold and Lars Jureen, *Demand Analysis*, p. 57. They are valuable even for demand analysis. See reservations of one researcher in this field: A. R. Prest, *Some Experiments in Demand Analysis*, The Review of Economics and Statistics, February, 1949, pp. 33-49.

112. *Ibid.*, pp. 46-48.

113. Michael Brennan, *Preface to Econometrics*, pp. 347-351.

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TABLE 25

Measures of Price Elasticity of Demand for Distilled Spirits

	Researcher	Basic Data Employed and Period	Finding: A 10% Decrease in Price would Increase Sales By
1.	Boni, Watkins, Mounteer and Co.	National experience, 1937-1941, 1948-1952	4.7%*
2.	Boni, Watkins, Mounteer and Co.	National experience, 1937-1952	2.2 *
3.	U. S. Treasury	Not stated	14.8 *
4.	U. S. Treasury	Not stated	9.2 *
5.	Boni, Watkins, Mounteer and Co.	Colorado experience, 1937-1941, 1948-1951	1.3 *
6.	Boni, Watkins, Mounteer and Co.	Georgia experience, 1939-1941, 1948-1951	14.8 *
7.	Boni, Watkins, Mounteer and Co.	Illinois experience, 1937-1941, 1948-1951	12.8 *
8.	Boni, Watkins, Mounteer and Co.	Massachusetts experience, 1937-1941, 1948-1951	11.9 *
9.	Boni, Watkins, Mounteer and Co.	Pennsylvania experience, 1936-1951	6.5 *
10.	Boni, Watkins, Mounteer and Co.	Monopoly state experience, 1948	24.0 *
11.	U. S. Treasury	Not stated	5.8 **
12.	Richard Stone	British experience, 1920-1938	5.7 †
13.	A. R. Prest	British experience, 1870-1938	8.6 ††

Sources: * Boni, Watkins, Mounteer & Co., *Economic Factors Underlying Sales and Public Relations Problems of the Distilled Spirits Industry,* Appendices, Table VII—4.

** Harold Wattel, *op. cit.*, p. 294.

† Richard Stone, *The Measurement of Consumers' Expenditure and Behaviour in the United Kingdom, 1920-1938,* Volume 1, p. 390.

†† A. R. Prest, *op. cit.*, pp. 40 ff.

The lessons to be learned from investigations utilizing correlation techniques are somewhat less clear perhaps than those drawn from the field studies. First, few demand analyses for distilled spirits exist in the literature. One reason for this is the lack of reliable basic data. Price series, for example, are not generally available except for control states. Second, no separate investigation of the New York market exists. To draw any policy conclusions about New York behavior on the basis of experience elsewhere may involve error. Third, the range of price elasticities is great; only five of the 13 cases cited suggest a relatively elastic demand, that is, a more than proportionate increase in quantity demanded as a result of a price decline.

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Fourth, the last published analysis is ten years out of date. No analysis covers the postwar period. There is reason to believe that consumption estimates are affected by the degree of unemployment in the economy and so prewar experience may not be a good guide to our present full employment situation.

In light of the above, it was deemed desirable to undertake additional analyses on the basis of the new evidence available.

Three correlation analyses were attempted, namely, a cross section analysis for Pennsylvania counties for 1960 (income versus expenditures for wine and spirits); a second, a time series analysis for Pennsylvania for the period 1947-1962 (apparent consumption per capita of distilled spirits in wine gallons versus real income per capita and the average price of distilled spirits); and last, a cross section analysis of control state experience for 1960 (apparent per capita consumption of distilled spirits in wine gallons versus median family income and the average price of distilled spirits.[114]

Why did not the author analyze the national market and the New York State market? The answer is that there are no reliable price data for either the nation or New York State. Since the data used, *e.g.*, population estimates, are already subject to error, market areas are poorly delineated, apparent consumption is not consumption, and transients are not accounted for, additional errors in the form of assumed prices were not warranted. Appendices A, B, and C contain the statistical results. Unfortunately the regression coefficients were deemed insufficiently significant. Therefore one cannot forecast with any great degree of certainty the effect of a change in price and income on distilled spirits expenditures and consumption on the basis of correlation analyses. The history of the industry suggests that consumption patterns do not change radically and that the demand curve is for the most part price inelastic. A ten per cent decrease in price will be followed by an increase in sales of less than ten per cent.

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114. The least squares method applied to the *logarithmics* of the basic data employed throughout. A. R. Prest in his analysis of British spirits consumption indicates that he favored the logarithmic approach although he cautioned that "there is no single unambiguous answer if anyone queries: Which is the more 'reliable' between linear and logarithmic estimates?" *Op. Cit.* p. 40.

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VI. CONCLUSION

When measured against the economic standards of efficiency, distribution, and equity, the case for the free market is formidable.[115] In such a free market, there is no place for resale price maintenance.

The removal of State policed resale price maintenance for distilled spirits in New York State[116] would change the marketing arrangements for these products even though the presence of a general voluntary resale price maintenance law in the State makes possible the continuation of some degree of vertical price fixing. Nevertheless, the removal of compulsory resale price maintenance would tend to reduce the price level of distilled spirits in New York State. How far and how fast prices would fall is difficult to forecast with great precision.

One variable in the picture is the speed and extent to which distillers place their brands under the protection of the State's general resale price maintenance law, the Feld-Crawford Act. If all distillers fair-traded their brands of spirits (this appears unlikely), overt price cutting might not develop immediately. The fewer the

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115. There is ample literature in the Anglo-American economics demonstrating this position. Two classics are A. C. Pigou, *The Economics of Welfare,* and A. P. Lerner, *The Economics of Control.*

116. Charles Hession in his *"The Economics of Mandatory Fair Trade"*, Journal of Marketing, April, 1950, concluded that it should be removed. On the other hand, opposition to the elimination of resale price maintenance for liquor in New York State will arise. The industry, for example, has always claimed that it is *sui generis,* and hence must be treated differently from every other business.* Indeed, there would be few who would deny that Prohibition constituted a traumatic experience for the alcoholic beverage industry and recognize why the industry is fearful lest any new arrangement recreate conditions that led to national Prohibition. The industry is likely to maintain that lower retail prices may lead to intemperance and consequences inimical to the public welfare.

But price levels which are "too low" as the result of private market forces may be raised by taxation. Monies now distributed at all levels of trade could be transferred to the public purse. Consumers, instead of benefiting directly from lower prices for their liquor, could benefit indirectly through the reduction of other taxes or through additional socially desirable expenditures.

It is also maintained that high liquor taxes foster "moon-shining" (illegal production), and "bootlegging" (illegal transport). (See Joint Committee of the States to Study Alcoholic Beverage Laws, *Impact on Alcoholic Beverage Control of Taxation and Mark-Up,* 1953, p. 27.) While revenue and sumptuary purposes of taxes often become intertwined, the purpose here is clear. First, the tax would be imposed for control only. Second, the tax would be set so that it would not increase the current spread between the cost of production and the final sale price.

* Cf. *Alcoholic Beverage Control,* An Official Study by the Joint Committee of the States to Study Alcoholic Beverage Laws. (Revised 1960).

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brands fair-traded, of course, the more intense will be the price competition.

Price competition will develop for fair-traded items. Distiller policing of prices under the Feld-Crawford Act is likely to be sporadic and ineffective as compared with State policing in a market as large as New York State. Since some distillers fair-trade their products wherever possible under duress of retailers, one can view general fair-trade as a temporary obstacle to open price competition rather than an impregnable barrier to it. Even with State policing, sporadic covert price cutting exists. Nevertheless, it is doubtful that any national distiller whose sales volume is threatened by price cutting on competing national brands will be able to hold the price line on a fair-traded national brand. One may conclude, therefore, that open price competition in distilled spirits is likely to develop shortly after the demise of State enforced resale price maintenance.

Open price competition in distilled spirits may lead to significant price cuts. Prices in the District of Columbia now are approximately one dollar a fifth below New York prices for national brands of whisky and somewhat smaller differentials exist for private brands. New York prices, if no tax changes develop, will approach those of the District. Whether the new "free" prices prove to be uneconomic will depend upon the actions of distillers, wholesalers, and retailers. Throughout the American industry, manufacturers complain that distributors tend to shave their profit margins to uneconomic levels. In turn, distributors use competitive pressures at their levels to justify their demands for price reductions from manufacturers. But manufacturers do not always wait for pressures from distributors to cut prices; rather, in seeking to widen their market, they may cut prices to distributors. They hope that these reductions will either be passed along to consumers to stimulate demand or if not passed along, will reward distributors for pushing their products as against those of competitors.

If no inter-level industry subsidy develops in liquors, then there is a predictable level below which prices can not fall and remain for very long. If liquors are to be marketed, the distribution process must be sufficiently profitable to attract enterprises. But since profit margins tend to be artificially high under resale price maintenance, some shaving of margins will develop and will force inefficient and small volume stores from the market. It is not be expected that the

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increase in sales volume will be sufficient to offset the downward slide of margins for such firms. An increase in sales volume, however, will often soften the blow of falling prices and margins for many retailers. The magnitudes involved are set out in Table 26.

TABLE 26

Hypothetical Sales/Profit Analysis Assuming 10 per cent Decline in Price, Different Price Elasticities of Demand, New York, Circa 1962

Price Elasticity of Demand	Off Premise Sales* (million wine gallons)	Gross Profits Distilled Spirits Sales** (million dollars)	Average Profits Per Licensee† from Distilled Spirits Sales
Assumed Orig. Avg. Price $4.70 fifth	24.3 Orig.	Orig. per w. g. $132.4	Orig. $31,353
0.6	25.8	$100.6	$23,805
0.7	26.0	101.4	23,994
0.8	26.2	102.2	24,184
0.9	26.5	103.4	24,468
1.0	26.7	104.1	24,633
1.1	27.0	105.3	24,917
1.2	27.2	106.1	25,106
1.3	27.5	107.3	25,390
1.4	27.7	108.0	25,556
1.5	27.9	108.8	25,745

NOTE: Figures have been rounded. Because of statistical "base" problem, revenues are slightly understated.

* Assumed to be 75 per cent of total. Total—32.4 million w.g.

** Price average assumed to be $4.70. Retail profit assumed to be $1.09 per fifth and 67 per cent of price reduction borne by retailer. Original profit per w.g. $5.45, after ten per cent price reduction, $3.90.

† 4,226 licensees.

Source of original data: Distilled Spirits Institute. Margin information from survey of current markup policies in State which are close to 30 per cent on invoice cost.

The process by which New York State moves from liquor resale price maintenance to a free market in liquors will have an important bearing on the effects of such a changeover. The State will want to watch very closely its effect on prices, the effect of prices on sales, the effect of sales on consumption, and the effect of consumption on social behavior. A moderate and predictable rate of changeover will be less liable to disturb traditional price and social patterns and will provide a greater opportunity for observation and study of the consequent reactions.

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At least two general alternatives exist for a moderately paced transition from price maintenance to the free market. First, individual liquor "types" may be removed from the umbrella of fair-trade at periodic intervals, e.g., wines, foreign whiskies, spirit blend whiskies, straight whiskies, and bonded whiskies might be freed in this order from resale price maintenance at six month intervals. This would give both consumers and distributors time to adjust to the new price patterns.

Second, a tax may be applied to the price of the spirits as they entered the State which would compensate for almost all of the expected price decline when the products are taken out from under resale price maintenance. A timetable for the reduction of the tax may be written into law so that an orderly downward adjustment in prices is insured. The advantage of this approach is that no dramatic price break would be permitted and hence little change in consumption patterns may be expected to develop.

From the distributor's viewpoint, he would be able to take a markup on the tax in an effort to protect his profit margin in the transition period as the next example shows.

For example, Seagram's 7 Crown is now marketed by the distiller at approximately $32.95 per case of fifths not including transportation charges. In New York, a fifth retails at $4.99 and in Washington, D. C. at about $3.83 per fifth. The "state" tax in both markets is $1.50 per wine gallon or $3.60 per case of fifths although New York State levied additional fees in 1963 which raised retail prices some twenty cents per fifth. The fifth of distilled spirits entering distribution channels then costs the wholesaler about $3.05. Distribution costs $1.94 or 64 per cent of invoice costs in New York State and $0.78 or 26 per cent of invoice costs in Washington, D. C. If the price of this whisky is expected to fall in New York to the Washington, D. C. price, this result could be prevented through an additional levy of 20 per cent before it entered trade channels. A 20 per cent tax would raise the price to about $3.65 to wholesalers, and when trade channels completed their markup procedures, the price would be about $4.60, assuming a combined markup of 26 per cent on invoice costs. The new price would represent a decline of less than four per cent over the old. Over a period of four years, the additional levy could be reduced gradually to 15 per cent, 10 per cent, five per cent, and then removed entirely.

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Some rearrangements within the wholesaling and retailing sectors will develop. But the careful removal of fair trade is not liable to disturb significantly the economic and social patterns of most New York State residents even in the initial stages of the experiment. Sales of distilled spirits as reflected in tax receipts will increase; there is some danger that this increase in sales will be interpreted by "prohibition forces" as an increase in anti-social behavior. It would be unfortunate, indeed, if such an interpretation were left to stand.

As noted earlier, total and per capita consumption of distilled spirits are likely to rise in the future as population increases, as families enjoy higher real incomes, and as the educational levels of the population rise. A price decline resulting from a more competitive market for distilled spirits will improve sales from these quarters:

1. *Increased consumption on the part of traditional consumers.* This is likely to be slight. The consumption of distilled spirits tends to be culturally determined and as such has an upper limit.
2. *New consumers.* This may be an important factor as consumers shift from other alcoholic beverages to distilled spirits. The intake of absolute alcohol may not be affected by this switch from one beverage to another.
3. *Sales to out-of-state residents.* A price differential for distilled spirits favorable to New York may induce consumers in neighboring states to shift their purchases to New York State stores. This will be especially true for those out-of-state residents who commute to work in this State.
4. *Domestication of purchases by residents who now buy their liquor in other markets.* There is a segment of New York consumers that buys liquor in such low price markets as the District of Columbia and New Hampshire. Were New York State prices to become competitive with prices in these markets, New York consumers would tend to buy in the local market.
5. *Sales induced by price anticipations.* If consumers are led to expect lower distilled spirits prices in New York State in the near future, purchases will be held to a minimum and stocks drawn down. Immediately following the removal of fair-trade, purchases would be made for immediate consumption and for the replenishment of inventories. Were wholesalers

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> and retailers to follow this pattern of behavior also, sales following the removal of fair-trade (as reflected in tax receipts of liquor entering the State) would be swelled further. Yet, actual consumption by individual consumers would not be affected by these purchasing changes.

In other words, marketing and sales patterns are more likely to be affected by the removal of resale price maintenance than any single individual's intake of beverage alcohol.

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APPENDIX A

Pennsylvania County Analysis 1959

A description of the series for the Pennsylvania County single correlation analysis follows:

1. *Expenditures for alcoholic beverages.* The store sales analyses of the Pennsylvania Liquor Control Board provides sales data for stores by county within Pennsylvania. No breakdown was available for distilled spirits purchases alone. Data were obtained for 1959, the only year for which reliable family income data were available.

2. *Income.* Median family income data for 1959 were obtained from the Bureau of the Census' *County and City Data Book,* 1962.

3. *Correlation Techniques.* The least squares method applied to the logarithms of the data were employed for this problem. IBM multiple regression package 6.0.043 was utilized.

Pennsylvania County	Expenditures for Wine and Spirits 1959	Median Income 1959
Montgomery	$46.77	$7,632
Monroe	41.50	5,093
Philadelphia	38.57	5,782
Delaware	36.07	7,289
Allegheny	35.23	6,173
Bucks	34.69	6,782
Chester	30.33	6,604
Erie	28.37	5,736
Pike	26.23	4,872
Beaver	26.20	5,777
Dauphin	25.41	5,796
Lehigh	24.20	6,064
Northampton	23.31	5,709
Cameron	22.58	6,548
Lackawanna	22.16	4,896
Washington	21.46	5,386
Cumberland	21.12	6,046
Westmoreland	20.73	5,597
Luzerne	19.89	4,722
Crawford	19.24	5,110
Berks	19.23	5,799
McKean	18.85	5,299
Mercer	18.71	5,872
Cambria	18.17	4,753
Wayne	18.07	4,444

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Pennsylvania County	Expenditures for Wine and Spirits 1959	Median Income 1959
Elk	$17.89	$5,641
Sullivan	17.36	4,322
Butler	17.32	5,815
Carbon	17.32	4,815
Warren	17.30	5,756
Lawrence	16.95	5,617
Fayette	16.90	4,291
Lycoming	16.06	5,235
Schuylkill	15.32	4,605
Venango	14.96	5,307
Centre	14.94	5,202
Armstrong	14.63	5,033
Blair	14.60	5,141
York	14.09	5,678
Susquehanna	13.95	4,815
Lancaster	13.73	5,810
Potter	13.49	4,547
Jefferson	13.47	4,568
Clarion	12.79	4,804
Bedford	12.65	4,265
Somerset	12.51	4,055
Lebanon	12.43	5,512
Northumberland	11.90	4,544
Franklin	11.77	4,882
Bradford	11.72	4,906
Clinton	11.49	5,207
Clearfield	11.35	4,640
Columbia	11.26	4,855
Greene	10.89	4,441
Wyoming	10.89	4,247
Indiana	10.84	4,907
Tioga	10.51	4,775
Huntington	10.39	4,138
Montour	10.31	5,134
Adams	9.63	4,945
Mifflin	9.12	4,860
Perry	8.12	4,725
Fulton	7.87	3,857
Snyder	7.09	4,648
Juniata	5.66	4,062

4. *Pennsylvania County Experience*

Series employed: (a) Expenditures in dollars for wine and spirits by County in Pennsylvania, 1959.

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(b) Median family income by county, Pennsylvania, 1959.

Term	Statistic	Significance at Five Per Cent Level	Confidence Limits (Three Standard Errors)
R^2	0.511	Significant	—
b	0.232	Significant	0.227 to 0.237

Estimating equation:

$$\log Y_c = 3.4310 + 0.2319 \log X_1$$

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APPENDIX B

Pennsylvania Analysis 1947 — 1962

A description of the statistical data used for Pennsylvania time series multiple correlation analysis follows.

1. *Consumption of distilled spirits.* These data were obtained from the Store Sales Analyses published annually by the Pennsylvania Liquor Control Board. Data supplied are for total consumption only. Per Capita data have been calculated by dividing total consumption by population 21 years of age and over.

2. *Population.* There is no single statistical series showing the adult population of Pennsylvania annually. Therefore the estimates of the U. S. Bureau of the Census for the total population of Pennsylvania for Census and intercensal years have been used. These are found in the appropriate issues of the U. S. Statistical Abstract. Reports for the Census years of the proportion of the population 21 years of age and older have been used to estimate the proportion of the population in this age category for the intercensal years. These proportions were then applied to the Bureau of the Census data. No attempt was made to correct this resulting series for the proportion of the population residing in areas which prohibit the sale of packaged alcoholic beverages. According to the Distilled Spirits Institute this percentage has never been large for Pennsylvania although a larger percentage of counties does prohibit the sale of distilled spirits by the drink.

3. *Income.* There is no annual statistical series showing the disposable personal income for Pennsylvania on a total or per capita basis. There are estimates for intermittent years only. Rather than risk the possibility of introducing an element of error into this series by estimating for the years for which no data were available the decision was made to use the published series of the Department of Commerce for per capita personal income in Pennsylvania. These data are available in the August issues of the *Survey of Current Business* (U. S. Department of Commerce).

The income series was then deflated by dividing by the Consumer Price Index of the U. S. Department of Labor's Bureau of Labor Statistics.

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4. *Prices.* There is no published reliable series on distilled spirits prices. Therefore it was necessary to construct such a series. The problems inherent in such a construction are many and the decisions for solution are in a sense arbitrary. The construction proceeded in this manner.

Prices of fifths of distilled spirits were drawn from the annual Store Sales Analyses of the Pennsylvania Liquor Control Board. These prices were grouped in classes designated by the Board, e.g., Bourbon (Bottled-in-Bond), Bourbon (Straight), etc. These groups were weighted by the average case sales for the period under study. The number of brands was not permitted to influence the calculations. For instance, the liquor stores in Pennsylvania retail a relatively large number of brands of cordials but these distilled spirits comprise a minute portion of the spirits sold. In effect, each spirit type was considered as a different product and weighted appropriately. If each year's sales had been used as weights, the index would have reflected both price and volume changes, e.g., Pennsylvania consumers moved away from the relatively low priced spirit blends toward the relatively high priced straight whiskies. A price index of offerings was thus obtained. A case can be made for the introduction of the volume changes as a reflection of the price offerings *as visualized by the consumer.* The Bureau of Labor Statistics does attempt to change its weightings every decade. The constant weight series shows a much lower rate of increase than does the variable weight series.

5. *Correlation technique.* The least squares method applied to the logarithms of the original data were employed for this problem. IBM Regression Package 6.0.043 was utilized.

Year	Per Capita Consumption (gallons)	Per Capita Real Income (dollars)	Average Price Per Fifth of Distilled Spirits
1947	1.477	$1,733	$3.95
1948	1.440	1,726	4.03
1949	1.341	1,713	4.01
1950	1.423	1,869	3.95
1951	1.494	1,916	4.02
1952	1.383	1,941	4.29
1953	1.447	2,041	4.30
1954	1.344	1,937	4.31
1955	1.422	2,053	4.33
1956	1.521	2,181	4.38

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Year	Per Capita Consumption (gallons)	Per Capita Real Income (dollars)	Average Price Per Fifth of Distilled Spirits
1957	1.571	2,193	4.42
1958	1.554	2,118	4.42
1959	1.651	2,171	4.42
1960	1.674	2,188	4.56
1961	1.673	2,193	4.56
1962	1.726	2,242	4.51

6. *Pennsylvania Time Series,* 1947-1962.

Series employed: (a) Consumption of distilled spirits per capita 21 years of age and over.

(b) Real personal income per capita.

(c) Average retail price of a fifth of distilled spirits in Pennsylvania package stores.

Term	Statistic	Significance at Five Per Cent Level	Confidence Limits (Three Standard Errors)
R^2	0.565	Significant	—
$b_{12 \cdot 3}$	0.738	Not significant	1.908 to −0.432
$b_{13 \cdot 2}$	−0.188	Not significant	1.951 to −2.327
$b^1_{12 \cdot 3}$*	0.862	Not significant	2.230 to −0.506
$b^1_{13 \cdot 2}$*	−0.122	Not significant	1.246 to −1.490

* b (partial regression coefficient) in standard units.

Estimating equation:

$$\log Y_c = -2.1378 + 0.7380 \log X_1 - 0.1878 \log X_2$$

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APPENDIX C

Control State Analysis, 1960

A description of the statistical data used for the Control State multiple correlation analysis follows:

1. *Consumption of distilled spirits.* These data were taken from the Distilled Spirits Institute which are based on the total population for 1960.

2. *Income.* Medium family income as reported by the Bureau of the Census for 1959 was used.

3. *Prices.* The prices for nine representative distilled spirits as reported for the Control States as of January, 1960 in *The Liquor Handbook, 1960* were averaged. This average was employed as representative of the relative price levels of the control states for the price series.

4. *Correlation technique.* The least squares method applied to the logarithms of the original data were employed for this problem. IBM Multiple Regression Package 6.0.043 was utilized.

State	1959 Median Income	January 1960 Price (per fifth)	Apparent Consumption Per Capita (Wine gallons)
Alabama	$2,683	$5.21	0.62
Idaho	3,841	5.11	0.86
Iowa	3,700	4.62	0.75
Maine	3,265	4.72	1.31
Michigan	4,848	4.78	1.14
Montana	3,906	5.24	1.16
New Hampshire	3,837	4.33	2.36
North Carolina	2,538	4.53	0.91
Ohio	4,767	4.71	1.14
Oregon	4,436	5.13	1.19
Pennsylvania	4,258	5.19	1.05
Utah	4,529	5.11	0.78
Vermont	3,317	4.52	1.38
Virginia	3,250	3.76	1.50
Washington	4,626	5.40	1.27
West Virginia	3,395	4.83	0.85

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5. *Control State Experience,* 1960

Series employed: (a) Consumption per capita in wine gallons based on total population reported by Distilled Spirits Institute (1960)

(b) Median family income (Bureau of the Census.)

(c) Average retail price of a fifth of nine different distilled spirits for January 1960, reported in *The Liquor Handbook,* 1960, p.

Term	Statistic	Significance at Five Per Cent Level	Confidence Limits (Three Standard Errors)
R^2	0.388	Significant	—
$b_{12\cdot3}$	0.709	Not Significant	1.849 to −0.431
$b_{13\cdot2}$	−2.184	Significant	0.246 to −4.614
$b^1_{12\cdot3}$*	0.434	Not Significant	1.130 to −0.262
$b^1_{13\cdot2}$*	−0.623	Significant	1.319 to −0.073

* b (partial regression coefficient) in standard units.

Estimating equation:

$$\log Y_c = 1.0112 + .7093 \log X_1 - 2.1841 \log X_2$$

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EXHIBIT E, ANNEXED TO AFFIDAVIT OF THOMAS F. DALY

NEW YORK STATE MORELAND COMMISSION ON THE ALCOHOLIC BEVERAGE CONTROL LAW

REPORT AND RECOMMENDATIONS No. 3

Mandatory Resale Price Maintenance

January 21, 1964

230 Park Avenue
New York 17, N. Y.

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NEW YORK STATE MORELAND COMMISSION ON THE ALCOHOLIC BEVERAGE CONTROL LAW

REPORT AND RECOMMENDATIONS No. 3

Mandatory Resale Price Maintenance

January 21, 1964

To: Hon. Nelson A. Rockefeller
Governor of the State of New York

You have directed this Commission to make a "thorough study and reappraisal of the law with respect to the sale and distribution of alcoholic beverages in the State . . . in the light of experience and current social and economic conditions." This Commission is proceeding with its study and reappraisal and is now rendering its third report.

This concludes the recommendations we have planned to submit for possible action for this Session of the Legislature. During the coming year we hope to review the operation of the present law in other respects. Ultimately it may be that consideration can be given to the proper role of the State with respect to the dangers resulting from the excessive consumption of alcohol, rather than the manner in which it is marketed.

Lawrence E. Walsh
Chairman

Manly Fleischmann
William C. Warren
Commissioners

Edwin L. Gasperini
Counsel

Miriam G. Cedarbaum
First Asst. Counsel

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MANDATORY RESALE PRICE MAINTENANCE

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INTRODUCTION

New York's present system of mandatory resale price maintenance is the only major restriction on the sale of packaged liquors on which this Commission has not yet filed its final recommendations. Section 101-c of the present law requires the fixing of minimum consumer resale prices by the brand owner and the enforcement of these privately fixed prices by the State Liquor Authority (SLA).

On the basis of our study and investigation, we have reached the firm conviction that New York's present system of mandatory resale price maintenance should be abandoned.

We are aware that repeal of this section will result in far-reaching readjustments in the liquor industry at all levels. We propose to minimize undesirable effects by having the repeal of this section take effect after a reasonable transition period during which the industry will have an opportunity to adjust to the proposed change in an orderly manner.

Our reasons for proposing that mandatory price controls be eliminated are as follows:

1. New York consumers are compelled to pay unnecessarily high prices for packaged liquor;

2. Competition is stifled and economic waste and inefficiency encouraged; and

3. Neither temperance nor respect for law is promoted by the artificially maintained high prices that sacrifice the interest of the consumer to the benefit of the liquor industry.

Before turning to the evidence on which these conclusions are based, we should like to emphasize the precise and peculiar nature of the State's present liquor price system. Section 101-c of the ABC Law *requires* the owner of every brand of liquor or wine (except retailers' private labels) sold in the State to file a schedule fixing the minimum consumer resale price for every size bottle of each brand he owns; and prohibits package store licensees from selling any liquor

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or wine at a price less than the minimum consumer resale price filed by the brand owner.[1] The SLA has no power to pass on the reasonableness of the minimum consumer price. Nor is the interest of the consumer represented by any private or public agency in the fixing of the minimum consumer price for packaged liquor. The role of the SLA under the law is the subservient one of enforcing the prices fixed by the distillers by suspending, cancelling or revoking the license of a retailer who sells at a lower price.

We are satisfied that there is no need to fix the prices of packaged liquor in New York. However, even if such a need could be shown, we would reject the proposition that state-enforced price decisions so important to the community at large should be turned over to a small private group with such a large direct financial self-interest.

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1. "Private labels" are specifically excepted by subdivision 3(d) of Section 101-c: "Provided, however, nothing contained herein shall require any manufacturer or wholesaler to file a schedule of minimum consumer resale prices for any brand of liquor or wine offered for sale or sold (1) to a retailer under a brand which is owned exclusively by such retailer and sold within the state exclusively by such retailer; . . ."

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I. PRICE CONTROL AND THE CONSUMER

For almost every fifth of whiskey that he buys, the New York consumer pays from 50 cents to $1.50 more than the price at which it is available in at least seven freer price markets. The excess cost is even greater than $1.50 in many instances, and more than $2.00 in some. These facts are clearly demonstrated by the following Chart 1, which shows the price per fifth to the New York consumer of 18 leading national brands as compared with the price which consumers pay at high volume retail stores in the District of Columbia, Houston, St. Louis, Dallas, Miami, Chicago, and Omaha.[3]

The District of Columbia, Texas, Nebraska and Missouri are jurisdictions which do not have statutes authorizing resale price maintenance or any other restraint on price competition.[3] Florida and Illinois have laws which, while permitting the brand owners to set prices, leaves the enforcement of these prices to private litigation to be conducted by the brand owners.[4]

The differences in excise taxes in these jurisdictions do *not* explain the major price differences. For example, Seagram 7 Crown sells for $3.49 per fifth in Washington, D. C.; $3.79 in St. Louis; $4.29 in Chicago; $3.89 in Miami; $4.49 in Dallas; $3.65 in Houston; $4.45 in Omaha; and $4.99 in New York. In every case New York's price is at least 50 cents higher. Taxes in Miami are actually 5 cents more per bottle than they are in New York, yet the Miami consumer can pay $1.10 less. Taxes in Missouri, the jurisdiction in the group with the lowest tax, are only 21 cents less per bottle than New York taxes, yet the consumer pays $1.20 less. Except for Old Taylor in Omaha, New York's price per fifth for each of 18 leading brands is higher by a larger amount than the difference in the excise taxes.

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2. In free markets it is unlikely that there will be a uniform price. The prices listed for free market areas are those freely quoted by large volume retailers. Retailers furnishing extra services and retailers in outlying or particularly favored locations will usually have higher prices.

3. See Appendix B.

4. *Ibid.*

CHART 1

Retail Prices of the Nation's 18 Leading Brands of Whiskey Which Are Marketed in New York

Brands All Fifths	Wash., D.C.	Houston, Tex.	St. Louis, Mo.	Miami, Fla.	Chicago, Ill.	Omaha, Neb.	Dallas, Tex.	New York
Seagram 7 Crown	$3.49	$3.65	$3.79	$3.89	$4.29	$4.45	$4.49	$4.99
Seagram V.O.	4.99	5.15	5.29	5.69	6.10	5.49	5.99	6.65
Canadian Club	4.99	5.15	5.29	5.69	5.09	5.49	5.99	6.55
Old Crow	3.39	3.65	3.88	3.99	3.79	4.50	4.59	5.45
Imperial	3.18	3.37	3.39	3.69	3.29	3.95	3.79	4.50
Jim Beam	3.49	3.65	3.88	3.99	3.79	4.25	4.59	5.10
Calvert Reserve (Extra)*	3.49	3.65*	3.88*	3.89*	3.69*	4.50	4.49*	4.99*
Schenley Reserve	3.49	3.68	3.79	3.79	3.59	4.50	4.39	4.99
Early Times	3.79	3.65	3.88	4.49	3.98	4.50	4.59	5.45
Ancient Age	3.59	3.65	3.88	3.99	3.79	4.65	4.59	5.95
Corby's Reserve	2.99	3.39	3.33	3.39	2.99	3.95		4.49
Fleischmann Preferred	3.18		3.49	3.79	3.49	4.29	4.49	4.55
Ten High	3.18	3.39	3.39	3.59	3.19	4.10	3.89	4.50
Old Taylor	4.29	4.19	4.39	4.39	4.39	5.95	4.99	5.95
Cutty Sark	5.59	6.27	6.19	6.19	5.89	6.79	6.95	7.11
Four Roses	3.69	3.65	3.99	3.88	3.79	4.50	4.59	5.19
J & B	5.95	6.27	5.99	6.39	5.98	5.90	6.98	7.09
Kentucky Gentleman	3.39			3.59	3.49		4.59	4.79

State Excise Taxes (Per Fifth)	
Mo.	$ .24
Wash., D. C.	$ .30
Ill.	$ .31
Neb.	$ .32
Tex.	$ .34
N. Y.	$ .45
Fla.	$ .50

Source: Information for areas other than New York supplied to the Moreland Commission by large volume liquor stores.

Note: *Beverage Media*, December 1963, lists two additional brands among the nation's leading twenty. Those two are omitted here because they are not marketed in New York in fifths.

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Chart 2 shows that, even after eliminating the 15 cent difference in excise taxes, the New York prices per fifth for 14 of the 18 brands listed are over 35% higher than the prices at which they are available in Washington.

CHART 2

Comparative Retail Prices for Fifths of Whiskey
New York and Washington, D. C.

Brands	Washington, D. C.	New York	Excess†	% New York Over Washington, D. C.
Seagram 7 Crown	$3.49	$4.99	$1.35	38.7%
Seagram V.O.	4.99	6.65	1.51	30.3%
Canadian Club	4.99	6.55	1.41	28.3%
Old Crow 86°	3.39	5.45	1.91	56.3%
Imperial	3.18	4.50	1.17	36.8%
Jim Beam	3.49	5.10	1.46	41.8%
Calvert Reserve (Extra)*	3.49	4.99*	1.35	38.7%
Schenley Reserve	3.49	4.99	1.35	38.7%
Early Times	3.79	5.45	1.41	37.2%
Ancient Age	3.59	5.95	2.01	56.0%
Corby's Reserve	2.99	4.49	1.35	45.1%
Fleishmann Preferred	3.18	4.55	1.22	38.4%
Ten High	3.18	4.50	1.17	36.8%
Old Taylor	4.29	5.95	1.51	35.2%
Cutty Sark	5.59	7.11	1.37	24.5%
Four Roses	3.69	5.19	1.35	36.6%
J & B	5.95	7.09	.99	16.6%
Kentucky Gentleman	3.39	4.79	1.25	36.8%

† Excess reduced by 15-cent difference in excise taxes.

Although there are unquestionably some differences in retail operating costs, as between particular cities in New York State and the cities with which New York prices are compared, even these differences do not account for the higher prices that we have found.[5] This may be seen from the fact that New York *wholesale* prices for pack-

5. Testimony of Professor Harold L. Wattel, Public Hearings of the New York State Moreland Commission on the Alcoholic Beverage Control Law, 645-46 (1963). Hereafter all references to the Public Hearings will be made by giving the name of the witness followed by the appropriate page number.

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aged whiskey are so high that New York retailers actually pay higher purchase prices in many instances than ultimate consumers pay for the same products in other areas. For example, Chart 3 shows that Old Crow 86 proof costs the New York retailer $4.10 per fifth, while consumers in Washington, Miami, and Chicago pay only $3.39, $3.99 and $3.79, respectively, per fifth. Imperial, Ancient Age, Corby's Reserve, Old Taylor, Four Roses and Kentucky Gentleman are all more expensive to the New York retailer than to consumers in Washington, Miami and Chicago. Eight of the other brands listed in Chart 3 are cheaper to consumers in at least one of the three listed cities than they are to New York retailers.

CHART 3

Prices of Whiskey per Fifth

Brands	Price N. Y. Wholesale 1/12 of Case Price	CONSUMER PRICES Washington, D. C.	Miami, Fla.	Chicago, Ill.	New York
Seagram—7 Crown	$3.77	$3.49	$3.89	$4.29	$4.99
Seagram—V. O.	5.01	4.99	5.69	6.10	6.65
Canadian Club	4.94	4.99	5.69	5.09	6.55
Old Crow 86°	4.10	3.39	3.99	3.79	5.45
Imperial	3.41	3.18	3.69	3.29	4.50
Jim Beam	3.83	3.49	3.99	3.79	5.10
Calvert Reserve (Extra)*	3.77*	3.49	3.89*	3.69*	4.99*
Schenley Reserve	3.77	3.49	3.79	3.59	4.99
Early Times	4.11	3.79	4.49	3.98	5.45
Ancient Age	4.51	3.59	3.99	3.79	5.95
Corby's Reserve	3.40	2.99	3.39	2.99	4.49
Fleischmann Preferred ...	3.44	3.18	3.79	3.49	4.55
Ten High	3.41	3.18	3.59	3.19	4.50
Old Taylor 86°	4.51	4.29	4.39	4.39	5.95
Cutty Sark	5.25	5.59	6.19	5.89	7.11
Four Roses	3.91	3.69	3.88	3.79	5.19
J & B	5.33	5.95	6.39	5.98	7.09
Kentucky Gentleman	3.61	3.39	3.59	3.49	4.79

Labor costs to the retailer are slightly higher in New York City than in some other jurisdictions as may be seen from Chart 4, but the widest spread, which exists between New York City and Omaha,

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Nebraska, the listed jurisdiction with the lowest cost, is only $27.34 and the average difference is only about $10.00. Further, if New York State as a whole, rather than New York City, is considered, the average spread is even smaller.

CHART 4

Average Weekly Earnings for Full-time Retail Liquor Employees

Area	Amount	Number of Stores
District of Columbia	$73.47	344
Miami, Florida	52.41	138
Chicago, Illinois	65.63	1,010
St. Louis, Missouri	68.65	132
Omaha, Nebraska (Greater Metropolitan Area)	49.71	87
New York City	77.05	1,712
New York State	69.97	3,357
Dallas, Texas	68.38	188
Houston, Texas	52.98	223

Based on 1958 Census of Business, Volume 2, Retail Trade Area Statistics.

On nationally advertised liquor, obviously, there is no difference in the quality of the product. Nor have we been able to find area-wide variations in service that would account for the major price differences shown on Chart 1.[6] Freight costs from the distillery are insubstantial.[7]

Despite our requests for it, we have received no evidence that the operating expenses of New York wholesalers and retailers account for the substantially higher consumer prices in New York.[8]

6. Professor Alfred Kahn, 1399; Wattel, 657.
7. See Morris Alprin, Counsel to the Greater New York Wholesale Liquor Dealers Ass'n., Inc., 814-15.
8. A survey of upstate wholesalers, submitted to the Commission by Jack Goodman, counsel for the New York State Wholesale Liquor Association, Inc., shows that the "average upstate wholesale establishment does approximately four million dollars volume", and that based on returns from 30 of these establishments they had an average total operating expense of 11.4 per cent of annual sales. The 1962 Annual Operations Survey of Wine and Spirits Wholesalers, prepared by the School of Commerce and Finance of St. Louis University covering a group of reporting liquor wholesalers across the country, and which was also submitted by Mr. Goodman, shows that the national average total operating expenses of liquor wholesalers with comparable volume is 10.1 per cent of annual sales.

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We are convinced that mandatory price control is a major cause of the high prices which New Yorkers pay for packaged liquor.[9]

Even private labels in New York, because they compete with artificially price-propped national brands, cost the New York consumer more than similar private-label products in freer markets.[10]

We have been told by economic experts that if the present system of mandatory resale price maintenance were removed, liquor prices in New York would drop about $1.00 a fifth.[11] On the basis of total sales of liquor in this State for the year 1962, the repeal of mandatory resale price maintenance would save New York consumers $150 million a year.[12]

9. See Wattel, 645-646; Kahn, 1399.

10. Moreland Commission Study Paper No. 5, p. 37, Wattel, 647.

11. See, *e.g.*, Wattel, 647-648, Kahn, 1400.

12. Wattel, 648.

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II. SACRIFICE OF THE EFFICIENCY OF COMPETITION

It is an accepted economic principle that when profit margins are protected, as they are under mandatory resale price maintenance, inefficient businessmen are shielded from the competition of efficient and aggressive businessmen.[13] Because the inefficient are able to make a profit with the aid of mandatory resale price maintenance, no pressure is exerted on them to seek to become more efficient in their present industry or to seek to transfer their resources to an industry where they could be used efficiently and more productively. Where a free market exists, it supplies the needed pressure on the inefficient and inept.[14]

Further economic waste occurs under mandatory resale price maintenance in that consumers frequently must buy services they neither need nor want.[15] Dr. Simon Rottenberg, Dean of the School of Business Administration of the State University of New York in Buffalo, testified:[16]

> "Some people want to buy liquor pure and simple. Some people want to buy a package which consists of liquor and, let us say, delivery services or a certain quantum of delivery services. People have different tastes. If, in fact, there were diversity of prices, those that wanted to buy their services with the liquor could do so at a higher price. Those that wanted to buy the liquor pure and simple without the services could do so at a lower price.
>
> "Uniform prices do not permit the consumer himself to have this option. In a sense it is wasteful. It is wasteful in the sense that it does not permit consumers to maximize their satisfaction by offering a large number of options to them."

Ordinarily the consumer who neither wants nor needs expensive personal service may select a store which does not provide such service but offers prices that reflect the consequent reduction in its overhead. A woman buying a dress has the choice of paying a higher price for personal attention on Fifth Avenue or a lower price by waiting on herself at Union Square. When a New York con-

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13. Moreland Commission Study Paper No. 5, p. 23-24; Kahn, 1404-05.

14. Wattel, 648-49; Professor Simon Rottenberg, 1224-25; Kahn, 1404-05; David L. Yunich, 851.

15. Yunich, 866.

16. Rottenberg, 1225.

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sumer buys a bottle of whiskey, he is deprived of a comparable opportunity for savings. For, when he buys whiskey, the New York consumer is prohibited from receiving the benefit of a lower price which reflects the merchandising efficiency of the store he chooses.

Compulsory resale price maintenance is at war with the American system of free competition. In his consumer message submitted to Congress in 1962, President John F. Kennedy listed as the third right of the consumer—the "right to choose—to be assured, wherever possible, access to a variety of products and services at competitive prices." [17] This right is defeated by resale price maintenance.

17. 108 Cong. Rec. 4168, H. Doc. No. 364, 87th Cong., 2d Sess., March 15, 1962.

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III. ARTIFICIALLY MAINTAINED PRICES AND TEMPERANCE

Professedly, the ABC Law was enacted "for the purpose of fostering and promoting temperance" in the consumption of alcoholic beverages "and respect for and obedience to law." The price-fixing provision, Section 101-c, reavows this purpose and the intent to "eliminate price wars which unduly stimulate the sale and consumption of liquor and wine, disrupt the orderly sale and distribution thereof, and tend to destroy the statutory plan for location of off-premises liquor and wine stores in neighborhood communities which most effectively serves public convenience and advantage."[18]

We are convinced that $1.00 a bottle is too high a price for New Yorkers to pay for a system based on such unproved assumptions about the relationship between the price of liquor and the amount consumed.

Over ten years before the passage of Section 101-c, prior to World War II, there were some "price wars" in New York City. They had long subsided when this law was enacted.

As far as can be determined, there were very few business failures among liquor retailers and none that can be shown to be the direct result of price-cutting.[19] As to the effect of the pre-war price-

18. We have explained in our Report and Recommendations No. 1 that the "statutory plan for location of off-premises liquor and wine stores in neighborhood communities" has outlived its usefulness to the consumers of this State.

19. Transcript of interview of William E. Phillips, Chief Executive Officer of the SLA, held at the offices of the Moreland Commission on October 22, 1963, p. 37. The absence of significant deviation in the number of licenses in effect during the years may also indicate that the price wars were not driving people out of business.

SLA Annual Report, 1945

	Package Stores	Restaurants	Hotels	Clubs
1936	1,814	12,079	1,902	661
1937	1,845	12,755	2,074	694
1938	1,859	12,737	2,088	730
1939	1,882	13,089	2,111	742
1940	1,892	13,346	2,123	746
1941	2,395	13,691	2,155	770
1942	2,380	13,368	2,025	780

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cutting on temperance in consumption and drinking behavior, the Annual Report of the SLA for 1940 stated:

> "An unstable market, such as existed in New York City, tends to increase the purchases of alcoholic beverages beyond the immediate needs of the consumer. *This should not be considered as an indication of increased consumption.* While the statement on page 47 indicated that 1,481,163 gallons more of liquor were sold in 1940 than in 1939, most of this increase can be attributed to the general improvement in business conditions throughout the nation. Liquor sales throughout the nation for 1940, based on beverage tax receipts, which at the most indicate only apparent consumption for the year, increased 7.7%. The increase in gallonage for New York State was 10.8% over 1939. While the conditions in the New York City market contributed to increased sales, some of the increase is due to purchases by residents of New Jersey because the New York City store prices were much lower than those quoted by New Jersey stores. This is apparent by the sharp decline in liquor sales figures for New Jersey during the unstable market period.
>
> "Another factor disproving the assumption that increased sales mean increased consumption is reflected in the decline in liquor sales immediately following the unstable price conditions.
>
> "One definite conclusion which can be drawn is that the sharp decline in prices increased consumer purchases, which were stimulated by the impression created by industry members that the reduced prices were temporary. This caused an abnormal bargain seeking demand on the part of many consumers who stocked up with liquors for future consumption.
>
> *There is no evidence that the reduced prices did create any anti-social conditions in New York City, the center of the affected market."* (Italics added.)

The SLA report also noted that arrests for drunkenness and for crimes committed by drunken persons had in fact *declined* in New York State during 1940 despite the World's Fair, the "unstable market in New York City and increased sales of alcoholic beverages."

This is the extent of the SLA's factual material on the actual effects of price-cutting in New York which this Commission has been able to uncover. We have sought in vain for documentation of the position taken by the SLA in 1945 and again in 1950 when that agency recommended the enactment of mandatory resale price maintenance legislation on the ground that price wars unduly stimulated the sale and con-

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sumption of liquor and wine.[20] This contradiction of the position taken by the SLA in 1940 was the subject of the following testimony by John F. O'Connell, Chairman of the SLA from 1943 to 1955, now Vice President of the Distilled Spirits Institute:[21]

> "Q I think in a memorandum supporting the bill in 1945, I believe written by someone in the Authority, I don't know by whom, it was stated that the price wars which occurred prior to World War II had increased consumption and had promoted intemperance in the use of alcoholic beverages.
>
> "A I think there is a theory to that effect. On the other hand, I don't believe you can prove, again, the exact causative relationship between the degree of consumption and intemperance. They don't necessarily follow parallel courses.
>
> "Q There was no real foundation for that statement in the memorandum; it was a theory?
>
> "A It was a theory."

However, regardless of the motivation which led to this change of the SLA's position, the time has come to assess the speculative assumptions relating to "temperance" which underlie mandatory resale price maintenance in light of the data and evidence available today, fourteen years after its imposition.

The industry's argument as stated by Mr. O'Connell is as follows:[22]

> "The price wars in New York City, particularly around 1940, gave some indication of what happens to the internal health and ethics of the industry and to its outward order and decency when the law of the jungle becomes the order of the day. They provide case histories involving the flaunting before the public of bargains in liquor by a favored few retailers who seek to drive to the wall the mass of their competitors, mostly small businessmen with limited capital.
>
> "It has been asked whether these occurrences in the aggregate had any demonstrable effect on temperance or whether the action by the State which has prevented repeat performances of this

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20. See SLA Memorandum on Legislation, Assembly Bill Intro. 1509—Print S2385, 1945 Session.

21. Transcript of interview held in the offices of the Moreland Commission on October 4, 1963, pp. 130-131.

22. O'Connell, 116-118.

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burlesque has promoted temperance. It is easy to give an affirmative answer but, as has been repeatedly demonstrated by all that has gone before, it is difficult, if not impossible, to prove it. Certainly, no one has been so presumptuous or reckless as to suggest that any price war, anywhere, at any time, did anything to promote temperance, however serious the lack of barometers to measure temperance itself."

This argument reduced to its most meaningful form assumes, as does our present system, that price stability itself, or "an orderly market" regardless of the price level, promotes temperance by discouraging bargains which are believed to stimulate excessive purchases and consumption. The other argument made by advocates of New York's present system of mandatory resale price maintenance is that the artificially high prices created by the system, in and of themselves, promote temperance by making more difficult the purchase and consumption of packaged liquor.

We have undertaken to examine these arguments separately and in combination. From the data available to us, we have concluded that the assumed relationship between the system of mandatory resale price maintenance and the goal of temperance is non-existent. We do not wish it to be inferred that we have reached the opposite conclusion, that is, that free price competition fosters temperance. We conclude only that temperance in the use of distilled spirits is unaffected in any meaningful degree by controls on price.

A. Market Stability

We have compared the statistics of the "stable market" and the "unstable market" and find no significant difference between them as regards the temperate use of liquor.[23]

We have grouped those states providing for uniform liquor prices (including states with state-owned stores, mandatory resale price maintenance states and mandatory minimum mark-up states) and compared their apparent consumption figures (as measured by

23. See Appendices A and B annexed hereto. The states listed in Appendix B are considered for these purposes to be "unstable" since these states permit price competition. The states listed in Appendix A are considered "stable" because those states enforce a uniform retail price.

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sales) with those states with free trade and privately-enforced "fair trade" arrangements. The comparison shows that no discernible relationship exists between the stability of the liquor market and apparent consumption. While Nevada, an "unstable" state, ranks first, and Florida, also an "unstable" state, sixth, in per capita consumption of distilled spirits, the states ranking second through fifth, and seventh through ninth, are all "stable" mandatory resale price maintenance states. The other "unstable" states rank as follows in per capita apparent consumption: Maryland—10th; Illinois—11th; Colorado—13th; Louisiana—14th; Wisconsin—17th; Wyoming—18th; Nebraska—23rd; Missouri—24th; South Dakota—26th; Arizona—28th; North Dakota—30th; South Carolina—31st; Texas—39th and Oklahoma—40th.[24]

Of note is the fact that the average per capita apparent consumption of all of the "unstable" states was 2.02 gallons or only .03 gallons (less than 4 ounces of liquor a year) more than the national average of 1.99.[25]

Not only do the per capita apparent consumption data reflect the absence of a relationship between the "stability" of a market and temperance, but also the available information on rates of alcoholism leads to this same conclusion.

Of the 10 states which have the highest rate of alcoholism in proportion to adult population,[26] six—New Jersey, California, Connecticut, New York, Delaware and Massachusetts—have mandatory resale price maintenance. On the other hand, the free trade states of Missouri, Nebraska and Texas rank 7th, 30th, and 34th, respectively. The other price "unstable" states are spread out and form no consistent pattern with Nevada ranking first, Illinois—6th; Wisconsin—8th; Colorado—16th; Maryland—17th; Louisiana—19th; Florida—23rd; North Dakota—24th; Arizona—29th; South Carolina—36th; South Dakota—38th; Wyoming—43rd and Oklahoma—44th.

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24. Moreland Commission Study Paper No. 1, Table 1, p. 12. It should be noted that Washington, D. C. and Alaska, both of which allow price competition and appear to rank high in per capita consumption, were omitted, as was Hawaii which has mandatory resale price maintenance.

25. *Ibid.*

26. Moreland Commission Study Paper No. 1, Table 10, p. 33. Again, Washington, D. C., which has no liquor price controls, was not included in this study. Alaska and Hawaii were also omitted.

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Another way to attempt to measure temperance in different places is to compare the rates of first mental hospital admissions for alcohol problems. Our comparison of these data in "stable" states and "unstable" states leads us again to conclude that no relationship exists between price "stability" and temperance. The rankings of the "unstable" states[27] are as follows: North Dakota—1st; Nevada—4th; Illinois—9th; South Dakota—10th; Maryland—11th; Nebraska—15th; Wisconsin—17th; Wyoming—18th; Colorado—26th; South Carolina—27th; Louisiana—29th; Texas—32nd; Arizona—37th; Missouri—40th and Florida—43rd.

After reviewing the available data which measure both aspects of temperance—the amount of liquor consumed and the problems associated with excessive consumption—we are unable to conclude that uniformity (which the industry calls "stability") or lack of uniformity in liquor prices contributes to temperance in the use of liquor. And our conclusion has been confirmed by those who are expert in the field of problems of alcohol. Dr. Selden D. Bacon, Director of the Rutgers University Center of Alcohol Studies, in Commission Study Paper No. 1, concluded that:[28]

> "The present New York Alcoholic Beverage Control Law and the control system set up thereunder has had no demonstrable effect on the direct problems of alcohol or on the rate of consumption of alcoholic beverages.
>
> * * * * *
>
> "An analysis of the figures on arrests for driving while intoxicated and for rates of alcoholism in the various communities studied, reinforces a conclusion that laws dealing with sales, sellers and selling are above all irrelevant to the solution of the major problems of alcohol.
>
> * * * * *
>
> "The most crucial variable in determining whether or not a defined area will have a high or low rate of alcoholism appears to be the level of industrialization prevailing in the area. Industrialized areas have higher alcoholism rates than rural and agrarian areas . . ."

27. Moreland Commission Study Paper No. 1, Table 18, p. 48. Excluded were Alaska, Washington, D. C. and Oklahoma, all "unstable" states, and Hawaii and Massachusetts, "stable" states.

28. pp. 54, 57.

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B. High Prices

The argument that high prices promote temperance in that they keep liquor out of the hands of those who should not have it is also unfounded. Not only does this blunderbuss approach miss its target—for obviously those who are alcohol addicts will acquire it at any price—but also the assumption that most liquor buyers are price conscious is unsupported in fact. Indeed, when the latter thesis is advanced by the industry, it has a distinctly tongue-in-cheek quality. The industry is motivated not by a desire to reduce its market, but by a desire to expand business activity. It does not oppose, but enthusiastically endorses, tax reductions to reduce prices. Certainly the tremendous expenditures for national and local liquor advertising are not intended to reduce consumption or encourage temperance.

To test the thesis that high prices promote temperance, our staff has collected current retail prices for leading brands of whiskey in every state in the union except Alaska, Hawaii and South Carolina.[29] On the basis of these prices, we have compared the per capita apparent consumption data for "low" price and "high" price states.

We divided the various states into two groups by comparing their retail prices with the New York prices of the 18 leading national brands of whiskey shown on Chart 1.

The basis of division was as follows:

> *Low*—all states in which the majority of the prices of these brands are 50 cents or more under the New York prices.[30]
>
> *High*—all states in which the prices of the majority of these brands are less than 50 cents below or are higher than the New York prices.

The states falling into the "low" price group are Missouri, Nebraska, Texas, Florida, Illinois, Louisiana, Maryland, Wisconsin, Iowa, Maine, Michigan, New Hampshire, North Carolina, Ohio, Vermont, Virginia and West Virginia. All the others are in the "high"

29. A chart of these prices is annexed as Appendix D. The State of Mississippi, which has prohibition, is also excluded.

30. The prices of several of the 18 brands are 50 cents or more lower than the New York prices in some of the "high" states as well.

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price group. In the ranking of states by per capita sales for the year 1962, the "low" price states included in the study rank as follows:[31]

Rank	Highest Quarter (12 states)	Rank	2nd Quarter (12 states)
2	New Hampshire	14	Louisiana
6	Florida	16	Virginia
10	Maryland	17	Wisconsin
11	Illinois	19	Maine
12	Vermont	23	Nebraska
		24	Missouri

Rank	3rd Quarter (12 states)	Rank	Lowest Quarter (11 states)
27	Michigan	39	Texas
29	Ohio	41	West Virginia
35	North Carolina	44	Iowa

We can discern no relationship between consumption patterns in the "low" and "high" price states. It should be noted that, while eight of the "low" price states shown above have per capita sales above the national average of 1.99 gallons, the other nine states are below that average.[32] If an allowance were made for out-of-state business attracted by low prices, an even larger proportion of the "low" price states would undoubtedly be below the national average.

If we look at annual arrests for drunkenness listed in Table 9 of Commission Study Paper No. 1, we see that the arrests involving drunkenness as a percent of all arrests exclusive of traffic violations[33] are much the same in the "high" price states as in the "low". In "low" price Richmond, Virginia, and Charlotte, North Carolina, the ratios are 54.9% and 55.5%, respectively. In "high" price New Brunswick, New Jersey, Jersey City, New Jersey, White Plains, New York, Rochester, New York, and Harrisburg, Pennsylvania, the respective percentages are 42.7%, 35.6%, 65.2%, 73.3% and 53.6%. No differentiation based upon the price of liquor alone is discernible.

In the ranking of states by rate of alcoholism, the "low" price states are spread throughout the listing and no pattern is noticeable. Of the "low" price states, Illinois, Missouri, Wisconsin and Michigan are in the top 12 states in rate of alcoholism; Ohio, Maine, Maryland, Vermont, Louisiana, New Hampshire and Florida are in the next 12; West Virginia, Texas and Iowa are in the third 12; and Virginia and North Carolina are in the bottom 12.[34]

31. Moreland Commission Study Paper No. 1, p. 12. Excluded are Washington, D. C., Alaska, Hawaii and Mississippi.
32. *Ibid.*
33. *Id.* at p. 26.
34. *Id.* at p. 33.

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In arrests for "driving while intoxicated," again no pattern is discernible. Missouri is 5th, North Carolina 6th, Louisiana 10th, West Virginia 12th, Florida 16th, Virginia 17th, Nebraska 21st, Vermont 23rd, Texas 25th, Ohio 31st, Iowa 32nd, New Hampshire 33rd, Michigan 34th and Wisconsin 36th.[35]

Finally, in rate of "alcohol first mental hospital admissions", only Illinois, Maryland and West Virginia of the "low" price states are among the top twelve, while Nebraska, Wisconsin, New Hampshire, North Carolina and Virginia are among the second twelve; Vermont, Ohio, Louisiana, Maine, Texas and Iowa are among the third twelve; and Missouri, Florida and Michigan are in the last quarter.[36]

We conclude that artificially high prices for liquor have no substantial relationship to temperance. They serve merely to insure the profit margins of the various segments of the industry.

We have also tried to ascertain whether "high" prices and "stable" prices when combined have any effect on drinking patterns. We cannot conclude that these elements, even when taken together, promote temperance or are related to temperance.

Thus, Florida, Illinois, Louisiana, Wisconsin, Missouri, Nebraska, Maryland and Texas have both "low" prices and "unstable" markets. Yet, their combined average per capita consumption amounts to 2.17 gallons, or 0.18 gallons (approximately 13 ounces per person per year) more than the national average of 1.99 gallons. And New York, Connecticut, New Jersey, Delaware, California, and Massachusetts, all of which have prices which are both high and uniform, have higher average per capita consumption.[37] And although in rate of alcoholism Illinois ranks 6th, Missouri 7th, Wisconsin 8th, Maryland 17th, Louisiana 19th, Florida 23rd, Nebraska 30th, and Texas 34th, they are overshadowed by California, Rhode Island, Massachusetts and New York, which rank 2nd through 5th, and Connecticut and New Jersey, which rank 9th and 10th, and which have mandatory resale price maintenance or in other words, a combination of both "high" prices and "orderly" markets.[38]

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35. *Id.* at p. 37.
36. *Id.* at p. 48.
37. *Id.* at p. 12.
38. *Id.* at p. 33.

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In arrests for "driving while intoxicated", the six "low" and "unstable" states as to which we have information—Florida, Missouri, Louisiana, Texas, Wisconsin and Nebraska—rank 16th, 5th, 10th, 25th, 36th, and 21st.[39] And in rate of "alcohol first mental hospital admissions", Illinois ranks 9th, Maryland 11th, Nebraska 15th, Wisconsin 17th, Louisiana 28th, Texas 32nd, Missouri 40th, and Florida 43rd.[40]

We also decided that an expert appraisal of the available statistics on the relationship between price and demand for liquor would be useful. Accordingly, we commissioned Professor Harold L. Wattel, Chairman of the Division of Business of Hofstra University, to conduct such a study. His principal conclusion was as follows:[41]

> "The history of the industry suggests that consumption patterns do not change radically and that the demand curve is for the most part price inelastic. A ten percent decrease in price will be followed by an increase in sales of less than ten percent."

Professor Wattel's views on the price inelasticity of liquor are supported by studies performed by others in other states. Thus in Chapter XXI of the 1963 Report of the Illinois Commission on Revenue, which relates to the Alcoholic Beverage Tax in Illinois, Karl B. Marx, Assistant Professor of Social Sciences at Western University, concluded that "the evidence available does not appear to support this, or any other claim with respect to price elasticity of demand for distilled spirits."[42]

Only one industry economist came forward at our public hearings to testify with respect to mandatory resale price maintenance. Professor Robert E. Weintraub, Sub-chairman of the Department of Economics at the Bernard M. Baruch School of Business of the City University of New York, testified on this subject on behalf of Licensed Beverage Industries, Inc., a distiller's trade association, and on behalf of the New York State Wholesale Liquor Association, Inc., a trade association of upstate wholesalers. He confirmed Professor Wattel's study and conclusions. Professor Weintraub testified as follows:[43]

39. *Id.* at p. 37.
40. *Id.* at p. 48.
41. Moreland Commission Study Paper No. 5, p. 54.
42. p. 733. For Professor Marx's full statement on this subject, see Appendix C, annexed to this report.
43. Weintraub, 1551-52, 1559-60.

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"Therefore one cannot forecast with any great degree of certainty the effect of a change in price and income on distilled spirits expenditures and consumption on the basis of correlation analyses. The history of the industry suggests that consumption patterns do not change radically and that the demand curve is, for the most part, price inelastic. A ten percent decrease in price will be followed by an increase in sales of less than ten percent."

* * * * *

"What does it mean? It means that a dollar fall in price, such as Dr. Wattel believes will occur, if resale price maintenance is abandoned, and in percentage terms that amounts to about a 22 per cent cut in price, on a figure of 4.60, which he uses on page 58, will lead to a 22 per cent rise in consumption per capita."

In weighing this testimony, we believe that the essential fact to bear in mind is that all of the statistics analyzed relate to *sales* rather than consumption, for the obvious reason that no figures on actual consumption are in existence or can be obtained. The importance of this distinction was clearly described by Professor Wattel in pointing out that an increase in liquor sales does not necessarily mean an increase in consumption.[44]

"First of all, I think consumers in our neighboring states would find the price differential very attractive, and especially to those people who commute to work in New York City, or New York State, from out of state, they would tend to purchase their distilled spirits here, as against in their home states.

"So there would be an increase in sales from that quarter.

"Secondly, there are people in New York State who now purchase their distilled spirits in other less costly markets, such as Washington, D. C., and New Hampshire, et cetera.

"I think if the prices were more attractive in New York State, that these consumers would do their purchasing here, instead of out of state. That is the second area from which the increase of sales would come.

"The third area would be that there would be some increase in consumption. I think that perhaps for wine drinkers now, that distilled spirits prices might become a little more attractive, relative to their income, and there would be some increase there.

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44. Wattel, 658-659.

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"Actually this may not involve any increase in alcohol intake at all, since we have a difference of proofs and alcohol percentages in these beverages.

"So that I believe, as I said before, that it would have a minimal effect on consumption. Sales, of course, would swell."

Thus, if New York prices of liquor decline below those of our neighboring states, we can expect that a substantial amount of liquor will be sold to residents of those states. The magnitude of the sales that can be expected to be made to out-of-state residents, should New York prices decline, may be indicated by the fact that over 238,000 out-of-state residents are regularly employed in New York State. The New York Metropolitan Area alone has some 211,900 regularly employed out-of-state residents; the Albany-Troy-Schenectady area has some 1,800 out-of-state residents regularly employed there; and the Buffalo Metropolitan Area has 3,100. The other parts of the State have an estimated 21,700 regularly employed out-of-state residents.[45]

Thus, we can expect New York liquor sales to be increased by the liquor purchases of these non-New Yorkers, and it seems very probable that these persons will buy liquor for their families and friends as well.

In sum, all the economics experts agree on the outside limits of any increase in sales which would follow a decline in New York liquor prices. A substantial part of that increase in sales will be the result of new purchasers rather than new drinkers, that is, those persons, New Yorkers and non-New Yorkers, who do not now buy their liquor in New York because of the exorbitant prices. Although we have not had evidence that actual New York liquor consumption will increase as a result of a decrease in liquor prices, neither can we conclude that actual consumption will not increase at all. Our best judgment, based on all we have seen, is that actual liquor consumption will not increase to a degree that would be of concern to the State.

We conclude this part of our discussion with three additional observations:

1. As we pointed out in our Report and Recommendations No. 1 (pp. 3-4), consumption of alcoholic beverages in the United States

45. U. S. Census of Population, 1960, Final Report PC (2-6B) *"Journey To Work"*.

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and particularly in New York has grown steadily since Repeal. No one has suggested any particular level of consumption that can be equated to temperance. Therefore, even if the elimination of resale price maintenance should result in a moderate increase in per capita consumption, this would be no reason for retaining this uneconomic and unjustifiable system, since consumption seems destined to continue its increase in the future under any circumstances.

2. We are also aware of the obvious fact that sales and possibly consumption can be temporarily stimulated by give-away or loss-leader type of sales. We think that over any reasonable period of time this phenomenon will not occur with any frequency because of the ordinary profit motives of businessmen. It is important to remember that the only evidence of "penny sales" that the industry could produce at our hearings related to what happened in Washington ten years ago,[46] and there was no evidence that even those brief occurrences resulted in any marked increase in the actual consumption of liquor. If this should ever prove a significant danger, it could, of course, be eliminated by legislation much less drastic than compulsory resale price maintenance.

3. It is obvious that, just as would be the case with any commodity, a *very* high price would make drinking economically impossible for lower income groups, and lessen the consumption of others. We do not consider this a proper objective of governmental control. It is particularly objectionable when it is achieved by means of a system of artificially high prices fixed by the industry for its own benefit and enforced by state action.

46. Hilliard Schulberg, Executive Director, Washington, D. C., Retail Liquor Dealers Assn., pp. 992-94.

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IV. ARTIFICIALLY MAINTAINED PRICES AND RESPECT FOR LAW

Industry witnesses favoring compulsory resale price maintenance assert that the removal of Section 101-c from the law will result in a significant increase in ABC Law violations by package store owners confronted with failure or marginal survival. They advance the claim that package store licensees commit fewer violations of the law than do other purveyors of alcoholic beverages because they are not subject to the rigors of competition and are assured of a protected margin of profit.[47] They contend that package store owners, for example, are not tempted to make doubtful sales to suspected minors or intoxicated persons. With the removal of the protection of Section 101-c, it is claimed that the prosperity of package stores would end, the value of package store licenses would decline sharply, and that package store owners would grow desperate and become more reckless in resorting to forbidden practices.

We weighed a similar argument by the industry in our consideration of other restrictive provisions of the ABC Law limiting the number and locations of package stores. We there described this argument as something akin to "moral blackmail," which the State could not accept.[48] We adhere to that position and conclude that the continuance of this uneconomic and wasteful system is not necessary or desirable from the standpoint of respect for and obedience to law. The State cannot compel liquor customers to pay a tribute of $1.00 a bottle to avoid infractions of law by liquor retailers. Strict enforcement by the police and administrative authorities must be the State's answer to threatened illegal sales.

Further, the industry claim that compulsory resale price maintenance is necessary to ensure the legal operation of liquor retailers was supported at our hearings solely by speculative opinions advanced by those most interested in maintaining the present system for their own benefit. It was considerably at variance with other testimony from officials in states having actual experience in the field.

Florida does not have state-enforced retail prices, but permits a brand owner to set a resale price and enforce it by private litigation.

47. Alprin, 793-4; Bloustein, 958.

48. Moreland Commission Report and Recommendations No. 1, January 3, 1964, p. 28.

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Richard B. Keating, Director of the State Beverage Department of that state, testified as follows:[49]

"Q. Going back to the difference between markets where the prices are higher in Florida as opposed to those markets where the prices are lower—have you from your experience discovered any difference in the compliance with the liquor laws in Florida because of the difference in prices in the markets?

"A. Not any significant difference. Certainly none that I could attribute to the price structure. It seems logical that the person who is in desperate straits financially may be moved to do something that they wouldn't do otherwise.

"But as far as any actual ones, we have very little.

"The one urban market, that is, the Jacksonville market, which we do not have price-cutting—as a matter of fact, we have had some recent indications that that market is not doing too well, so far as the compliance of the law on the sales to minors, for instance."

Frank E. Weakly, Chairman of the Alcoholic Beverage Control Board of the District of Columbia, told us of the results of a recent review of the problem under consideration by another independent group.[50]

"Q. Chairman Weakly, was a citizens committee appointed in July 1962 to conduct a cooperative study of the Alcoholic Beverage Control system in the District of Columbia?

"A. I think it was appointed earlier than that, but I think it rendered its report in July.

"Q. You are correct. The committee was appointed earlier in the year 1962, and can you tell us what the committee reported in connection with the District of Columbia's system or lack of any resale price maintenance?

"A. They recommended maintaining the status quo, namely, no controls."

Before concluding our discussion of the relationship between resale price maintenance and respect for the law, we believe that a brief review of the history of Section 101(c) will be instructive. It demonstrates clearly that the enactment resulted not from any disinterested attempt to find a legislative remedy for actual and impor-

49. Keating, 672-73.
50. Weakly, 690-91.

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tant evils, but rather from a concerted and successful effort by the liquor industry to obtain a legally-protected guarantee against supposed evils anticipated at some time in the future.

In 1942, long before the enactment of Section 101-c, the provision mandating resale price maintenance, the Legislature enacted Section 101-b. This section prohibits price discrimination on sales both to wholesalers and retailers. It also requires every brand owner and wholesaler to file with the SLA a monthly schedule of the price at which he sells each brand and size of container of liquor and wine. It was a protection against discriminatory favoritism by wholesalers and distillers, which the SLA described as the principal cause of the New York "price wars".[51] If enforced, it unquestionably would have made an important contribution to maintaining the stability of the retail market.[52] Section 101-b is still a part of our law.

The effectiveness of Section 101-b alone as a deterrent to price wars was never tested. Neither the SLA nor the industry was satisfied with eliminating discrimination and thus fostering stability. Wartime shortages had put an end to the price wars. When the end of these shortages was foreseen in 1945, the SLA, before any experience had been gained as to the ability of Section 101-b to forestall price wars, successfully advocated the passage of a law which authorized the SLA, by regulation, to require the imposition of resale price maintenance. The law authorized the SLA:[53]

> "To adopt rules and regulations, in its discretion, (a) prohibiting or regulating the sale of alcoholic beverages in violation of the provisions of a fair trade contract entered into pursuant to article twenty-four-a of the General Business Law (Feld-Crawford Fair Trade Law); (b) prohibiting the sale of any or all alcoholic beverages, other than items offered for sale under a brand which is owned exclusively by one retailer and sold within the state by such retailer, except pursuant to a fair trade contract entered into in accordance with the provisions of article twenty-four-a of the General Business Law. Such rules and regulations

51. 1940 Annual Report of the S.L.A., pp. 14-15.

52. See SLA Memorandum on Legislation, note 20, p. 13 *supra*, at p. 2:

> "By placing all retailers on an equal purchasing level, drastic reductions of resale price will be eliminated. It is believed that drastic price differentials on the same brand sold by different retailers is the result of special deals given to selected retailers and not made available to others. If all retailers purchased at the same price, the differential in resale price could not be an appreciable one because the retailer would have to stand the entire loss himself without the assistance of the distiller or wholesaler."

53. Chapter 687 of the Laws of 1945, repealed by Section 4 of Chapter 689 of the Laws of 1950.

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should be calculated to foster and promote temperance, and provide for the orderly distribution of alcoholic beverages. For the violation of any rule or regulation duly promulgated under this subdivision, the Authority may suspend, cancel or revoke a license as follows: for a first offense, not exceeding ten days suspension of license; for a second offense, not exceeding thirty days suspension of license; and for a third offense, the Authority may suspend, cancel or revoke the license."

In its memorandum supporting that law, the SLA stated:

"There has recently been some evidence that alcoholic beverages were being sold at prices below the maximum price fixed by the Office of Price Administration. Members of different branches of the industry were of the opinion that this might signify the imminence of a 'price war'.

* * * * *

"This would enable the Liquor Authority to permit brand owners to enter into such contract voluntarily and in connection therewith prohibit any violation of a fair trade contract by any retailer. In the event this voluntary method failed, the Liquor Authority could prevent an incipient 'price war' from spreading by using the alternative method or power to prohibit the sale of any alcoholic beverages except pursuant to a fair trade contract."

Mr. O'Connell, then Chairman of the SLA, told us that at the time he sought this power to enforce distiller-fixed retail prices, there had then been no repetition of the pre-war price wars. They were merely "anticipated".[54]

Despite the absence of price wars and the protection of Section 101-b, which was designed to prevent the very conditions that had caused the price wars (special deals to favored retailers), the SLA proceeded by regulation to exercise its power under the 1945 law. Its regulations became the New York resale price maintenance law. Although subsequently held unconstitutional as a delegation of legislative power, they were validated by enacting them into the statute as present Section 101-c.

The SLA drafted this basic price control pattern under the guidance of the retail package store associations. Oddly enough, in spite of the extensive meetings and discussions held with all elements of the liquor industry from 1944 through 1947, there is no record of

54. Transcript of an interview held in the offices of the Moreland Commission on October 4, 1963, p. 133.

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any meeting of the SLA or its staff with civic interest or social welfare groups, or for that matter any representative of the consuming public.

The true concern of the SLA appears in a staff memorandum prepared at the time for Chairman O'Connell. The full memorandum is set forth in Appendix E. The actual area of industry and regulatory concern appears from the following excerpts.

As to conferences held with the distillers:

"The Distillers' representatives were agreed that price wars are bad for the industry as a whole; that if each distiller or national supplier kept this thought constantly in mind and in effect, there could be no price wars. Whereas these representatives were agreed that a price war was not imminent in the New York area on standard goods, there was some small difference of opinion as to the possibility of a price breakdown on so-called 'distress goods', by specific reference, rums and grain spirit gins. Three of the representatives felt that such price breakdown could happen as a natural consequence of an over supply on these items and the reluctant acceptance by the public, so long as standard goods are available. Another representative felt serious price breakdown on distress goods could be effectively controlled under provisions of the Hollowell Bill.

The Distiller representatives were agreed that

(a) Fair trade is a desirable method of operating in the liquor industry;

(b) That some agency outside the industry should enforce fair trade contracts where such are in effect, either under voluntary or mandatory regulations;

(c) That the enforcement of fair trade contracts properly falls under present State Control."

As to a conference held with package store representatives:

"This conference was called at the request of several of the package store associations, and was attended by twenty representatives, including counsel of the associations listed. During open discussion, the following items were generally agreed upon, and are so indicated in the stenographic record of the meeting.

(1) That price cutting presently is statewide among the known 'price chiselers'.

(2) The price cutting, from 25 cents to 50 cents per bottle, is in effect with these dealers, on standard brands, under Fair Trade contracts, and that such information has been brought repeatedly to the attention of the brand owners, without any effective results.

(3) That such price cutting is practiced by these dealers to effect tie-in sales of off brand merchandise.

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(4) That rums and grain spirit items are being offered at prices slightly above dealers cost.

(5) That price cutting is widespread on standard brands of blended whiskies most generously distributed; that this is a certain indication that a price war will result as soon as stocks return to normalcy.

(6) That these associations, representing, according to their own statements, approximately 90% of the licensed retail liquor dealers, have no confidence in the intention or ability of distillers and other brand owners to avoid price wars or to maintain any discipline among certain known price chiselers, and that under present Fair Trade agreements these dealers, attempting to abide by stipulated prices, are at a severe handicap, and that they unanimously agree that provisions of the amendment to the Alcoholic Beverage Control Law, relating to Fair Trade price regulations, be made mandatory and effective at the earliest possible time."

The memorandum throughout is concerned solely with the economic welfare of the industry. There is not one word of concern for temperance or for law enforcement—or for the consuming public.

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V. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

For all of the foregoing reasons we have concluded that Section 101-c injures the New York consumer in at least three important ways:

1. It causes New Yorkers to pay about $1.00 a fifth more for liquor than consumers in areas of the country which do not have mandatory resale price maintenance.

2. It eliminates competition and deprives the New York consumer of the benefits of free market efficiency.

3. It places price-fixing power in the exclusive hands of the distillers, the group having the largest self-interest to serve, an extraordinary power which the State should be reluctant to grant any private group, even a disinterested one.

We also find:

1. Compulsory resale price maintenance enforced by the State has no significant effect upon the consumption of alcoholic beverages, upon temperance or upon the incidence of social problems related to alcohol.

2. The repeal of this system will not create law enforcement problems with which the State is unable to deal.

B. Recommendations

We make the following recommendations:

1. Section 101-c of the ABC Law, which provides for SLA enforcement of minimum consumer resale prices fixed by the distillers, should be repealed.

2. Although we believe that State enforcement of distiller-fixed consumer prices is completely unjustified, we recognize that its elimination represents a radical change which, when combined with the elimination of the restrictive licensing of package stores, may well have an impact on the industry and especially on some of the small retail package stores. But the interests of the consuming public must be paramount, so that the possible effect on the industry does not support the retention of this unjustified law. This is particularly true since it still will be possible for the distillers, like manufacturers of other branded products, to make private resale price maintenance arrangements under the Feld-Crawford Act.

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In order to avoid too sudden an impact on the industry, however, we recommend that there be a transition period during which the industry will have an opportunity to adjust to the proposed change in an orderly manner. We therefore propose that the repealing act provide for a reasonable period—six months—in which package store owners will be able to dispose of stock on hand at the time of the statutory enactment.

Respectfully submitted,

LAWRENCE E. WALSH
Chairman

MANLY FLEISCHMANN
WILLIAM C. WARREN
Commissioners

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First Asst. Counsel

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APPENDIX A

1. States like New York in which the distiller fixes the minimum consumer resale price entirely on his own.

California. Calif. Bus. & Prof. Code, Div. 9 §24755, added Stat. 1961, Chap. 635, p. 1935 as amended; Calif. Stat. 1963, Chap. 1022.

Delaware. Del. Alcoholic Beverage Control Commission Regs., Rule 39 (1962).

Hawaii. Hawaii Revised Laws, §159-17 (1955); Hawaii Liquor Commission of the City and County of Honolulu Regs., Rule 34 (1955).

Indiana. Ind. Alcoholic Beverage Commission Reg. No. 11 (1953).

Massachusetts. Mass. Gen. Laws, Chap. 138, §§15, 25C (1932), as amended to date.

Minnesota. Minn. Stat., §§340.09, 340.97-340-976 (1957); Minn. Liquor Control Commissioner Regs. 425-4282 (1962).

New Jersey. N. J. Division of Alcohol Beverage Control Reg. No. 30, Rules 1-5 (1957), as amended.

2. States which prescribe minimum mandatory markups for wholesalers and retailers—but do not otherwise enforce minimum consumer resale prices.

Arkansas. Wholesalers, 13%; Retailers, 30%, Ark. Stat. Annot., §48-1204 (1947), with 1961 Supp.

Georgia. Wholesalers, 12%; Retailers, 27%, Ga. Dept. of Revenue, Alcohol Tax and Control Unit Regs., Chap. 7 (1962).[1]

Kansas. Kan. Laws of 1961, Chap. 241.

New Mexico. Wholesalers, 17.5%; Retailers, 38.8%. N. M. Stat. Annot., §46-9-11 (1953).[2]

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1. On December 12, 1963, the Director of Revenue of the State of Georgia announced that as of January 1, 1964 Georgia would abandon its minimum markup regulations. Thus, Georgia is the newest member of the "free trade" states. The Director's action was based upon a report made to him by John E. Lewis, an Assistant Professor of Economics at Georgia State College, who concluded that, based upon "most reliable studies," total liquor consumption in Georgia would not increase as a result of lower "legal liquor prices."

2. New Mexico also provides that wholesalers and retailers may not sell in excess of 18.04% and 33⅓% of the retail selling price, respectively. N. M. Stat. Annot. §§46-9-5, 46-5-6 (1953).

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3. States which require the distiller or wholesaler to fix minimum consumer prices but also fix a minimum markup for the wholesaler and retailer.

Connecticut. Wholesalers, 11%. Conn. Laws 1963, Public Act No. 268; Conn. Gen. Stat., §30-63 and §30-64 (1958). Retailers, 21½% of the selling price. Conn. Laws 1963, Public Act No. 267.

Kentucky. Wholesalers, 15%; Retailers, 33⅓%. Ky. Rev. Stat., Tit. XX, §244.390 (1960); Ky. Alcoholic Beverage Control Board Regs., A.B.C.:2:12 (1961).

Rhode Island. Wholesalers, 13%; Retailers, 25%. R. I. Liquor Control Admin. Reg. 52, 67 (1947).

Tennessee. Wholesalers, 11½%; Retailers, 27.5%. Tenn. Code Annot., §57-7-1 (1961).

4. States which own and operate liquor stores and set their own prices.

Alabama—Ala. Code, Tit. 29 (1958).
Idaho—Idaho Code, Tit. 23 (1955).
Iowa—Iowa Code, Tit. VI (1962).
Maine—Me. Rev. Stat., Chap. 61 (1954).
Michigan—Mich. Compiled Laws, Chap. 436 (1948).
Montana—Mont. Rev. Code, Tit. 4 (1942).
New Hampshire—N. H. Rev. Stat. Annot., Tit. XIII (1955).
North Carolina—N. C. Gen. Stat. Recompiled, Chap. 18 (1943).
Ohio—Ohio Rev. Code, Tit. XLIII.
Oregon—Ore. Rev. Stat., Tit. 37 (1955).
Pennsylvania—Penn. Laws of 1951, Oct. 21.
Utah—Utah Code Annot., Tit. 32 (1953).
Vermont—Vt. Rev. Stat., Tit. Seven (1959).
Virginia—Va. Code, Tit. 4 (1950).
Washington—Wash. Rev. Code, Tit. 66 (1951).
West Virginia—W. Va. Code, Chap. 60 (1935).

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APPENDIX B

1. States which have general statutes authorizing private resale price maintenance agreements.

Arizona. Ariz. Rev. Stat., §44-1422 and §44-1423 (1956).

Colorado. Col. Rev. Stat., §§55-1-1, 55-1-4 (1953).

Florida. Fla. Stat. Annot., §§541.03, 541.07 (1962).

Illinois. Ill. Annot. Stat., Chap. 121½ §§188, 189 (1960).

Louisiana. La. Rev. Stat., §51:392 (1950).

Maryland. Md. Annot. Code, Art. 83, §103 (1957).

Nevada. Nev. Rev. Stat., §§599.030, 599.040 (1962).

North Dakota. N. D. Cent. Code, §§51-11-02, 51-11-04 (1960).

Oklahoma. Okla. Stat. Annot., Tit. 78, §§41, 44 (1951).

South Carolina. S. C. Code of Laws, §§66-93, 66-94 (1962).[1]

South Dakota. S. D. Code, §§54.0402, 54.0406 (1939).

Wisconsin. Wis. Stat. Annot., Tit. 14, §133.25 (1957).

Wyoming. Wyo. Stat., §§40-10, 40-14 (1957).

2. Jurisdictions which have free trade.[2]

Alaska

District of Columbia

Missouri

Nebraska

Texas

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1. South Carolina prescribes a maximum markup of 25% above cost. S. C. Code of Laws, §4-72 (1962).
2. Georgia is now a free trade state. See note 1, p. 32, *supra*.

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APPENDIX C

Excerpt from Chapter XXI, 1963 Report of the Illinois Commission on Revenue

Elasticity of Demand for Distilled Spirits—The success of a tax rate increase depends upon the elasticity of demand for the product in question. If the demand for a product is relatively inelastic, as in the case of cigarettes, an increase in the tax rate should result in a considerable increase in state tax revenue. However, if the demand for a product is relatively elastic, a tax rate increase will result in a proportionately larger reduction in sales, and may well result in only a meager increase in state revenue. The producer or distributor of the product may suffer since his sales decline, and he must also absorb a large share of the tax burden.[56]

Several students of liquor taxation have concluded that the demand for this product is relatively inelastic. In 1942, Glenn D. Morrow and Orba F. Traylor assumed that the demand for alcoholic beverages is inelastic when they wrote: "Tax levies within current limitations apparently exercise little influence on consumption of legal alcoholic beverages."[57] In the 1949 Report of the Revenue Laws Commission, Dr. J. D. Morgan wrote:

> "The sections on consumption and elasticity indicate that the demand for alcoholic beverages is quite inelastic . . . It would appear that within any reasonable limit, the state can secure what revenue it wishes from the liquor tax by the simple expedient of making proportionate changes in its tax rates. If Illinois wanted an aditional twelve million dollars from distilled

56. It is possible that the producer may not be able to directly shift the tax backwards to the owners of the factors of production in the long run if these factors can shift from the taxed industry to other industries. However, this shift in factors of production will tend to reduce not only the wage rates of the moving factors, but also, because of the increased supply of factors, the wage rates of factors already employed in other industries. To the extent that this is possible some of the tax can be shifted indirectly to the factors of production employed in non-taxed industries. If labor unions in both the taxed industry and the non-taxed industries have considerable monopoly power, unemployment, rather than a general reduction in factor payments, may occur. Under these conditions, it is possible that a disproportionate share of the tax may be shifted to owners of the other factors of production.

57. Glenn D. Morrow, and Orba F. Traylor, *State Liquor Monopoly or Private Licensing?* (The Legislative Council: Commonwealth of Kentucky, 1942), p. 62.

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spirits, all she would have to do would be to double her present $1 tax."[58]

Tax rates on distilled spirits were not increased in Illinois at that time. However, on August 1, 1959, the excise tax rate on distilled spirits was increased from $1.02 per gallon to $1.52 per gallon. According to retail price data supplied by the Licensed Beverage Industries, the resulting increase in retail prices was greater than the increase in the tax.[59] Retail prices in almost all other states were the same in 1960 as they were in 1959.[60] Between 1959 and 1960, consumption of distilled spirits increased by 10.1 percent in Illinois, while the average increase in consumption in the license states was 4.9 percent.[61] Per capita consumption of distilled spirits in Illinois increased from 1.43 gallons in 1959 to 1.60 gallons in 1960, to 1.63 gallons in 1961,[62] which means that in Illinois, consumption of distilled spirits is increasing at a faster rate than the increase in population. Since, in 1960, consumption increased while prices were increasing by more than the tax increase, it is safe to conclude that most, if not all, of the additional tax burden was, at least in the short run, shifted to the drinking public. State revenue derived from the excise tax on distilled spirits increased from $16 million in 1959 to over $23 million in 1960. Monthly data on distilled spirits collections, supplied by the Illinois Department of Revenue, indicate that revenue from this source will exceed the 1960 level in both 1961 and 1962.

This all seems to substantiate Dr. Morgan's claim that the demand for distilled spirits in the State of Illinois is quite inelastic. However, under "normal" conditions, a price increase will lead to a reduction in the consumption of a specific product. If both the price of the product, and the amount of the product sold increase at the same time, the demand for the product in question must have increased. Since the percentage increase in per capita personal income was less

58. J. D. Morgan, "Taxation of Alcoholic Beverages," *Report of the Revenue Laws Commission* (Springfield, Illinois: State of Illinois, 1949), p. 564.

59. The price per fifth of Seagrams 7 Crown blended whiskey increased by 10 cents, while the price of Old Forester increased by 21 cents per fifth. Source: "Retail Sales Prices of Leading Brands", Licensed Beverage Industries, Inc.

60. *Ibid.*

61. *Apparent Consumption of Distilled Spirits*, 1952-1961 (Washington, D. C.: The Distilled Spirits Institute, 1962).

62. *Ibid.*

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in Illinois than the national average between 1959 and 1960, the reasons for this shift in demand for distilled spirits are not apparent to this writer at this time. No definite conclusions regarding the elasticity of demand for distilled spirits in Illinois can be made without full knowledge of the extent of the increase in demand for this product.

Other students of distilled spirits taxation have claimed that the demand for this product is relatively elastic. Joseph McKenna and Francis Boddy wrote in a paper read before the Forty-sixth Annual Conference of Taxation of the National Tax Association, "Most investigators agree that the best estimate of elasticity for distilled spirits is between 1.0 and 1.5".[63]

In reference to an earlier study the authors wrote "the most recent study, done for the industry by independent economists, leans toward the high side, near 1.5."[64] McKenna and Boddy felt that that estimate was high. They wrote, "The authors lean toward an estimate in the lower end of this range, say, under 1.2."[65]

In an annual publication, the Licensed Beverage Industries, Inc., include a section on the unsuccessful attempts of states to increase tax revenue by increasing tax rates on distilled spirits.[66] However, based on their data, it is impossible to make generalizations regarding the elasticity of demand for distilled spirits. Referring to Rhode Island, the report reads, ". . . the liquor levy was increased from \$1.00 to \$1.50 in 1951. Sales declined 49% in the first full year of the higher tax (against a decline of 12% for the nation as a whole); revenue fell off by 23.5%. Sales in the succeeding year were still 32% below those under the old levy; revenues up only 1.7% from those realized under the old rate."[67] This writer does not question the implication that the demand for distilled spirits in Rhode Island is relatively elastic since it is quite easy to travel to Connecticut or

63. Joseph P. McKenna, and Francis M. Boddy, "How Bad are Liquor Taxes?", *Proceedings of the National Tax Association* (Paper read before the Forty-sixty [sic] Annual Conference of Taxation of the National Tax Association, at Louisville, Kentucky, September 28, 1953), p. 31.

64. *Ibid.*, p. 33.

65. *Ibid.*, p. 33.

66. *Facts About the Licensed Beverage Industry* (New York: Licensed Beverage Industries, Inc., 1961).

67. *Ibid.*, p. 45.

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other neighboring states to purchase a stock of liquor. However, the authors of the study must agree that the demand for distilled spirits in West Virginia, a control state, was probably inelastic when they wrote, "West Virginia . . . raised its gross mark-up on a typical bottle by about ⅓ in mid-1957. In fiscal 1960, sales were still 9.3% below those of fiscal 1957—while gallonage sales for the nation as a whole had risen 6.2%."[68] In other words, if the price increased by 33 percent and sales fell by only 9.3 percent (about 15 percent if consideration is given to the national increase), the demand for distilled spirits in that state was inelastic.[69]

Since the retail price per fifth is determined by a state agency in the control states, closer estimates of price elasticity of demand, based on price and consumption data, can be made in these states than in the license states. In December of 1959 an additional tax was levied on distilled spirits in Alabama, which resulted in a retail price increase of slightly less than 10 percent.[70] In 1960, consumption of distilled spirits in that state was 7.7 percent lower than it was in 1959.[71] On April 1, 1959, liquor prices in Ohio were increased by approximately 10 percent. Consumption in Ohio dropped from 11,776,000 gallons in 1958 to 11,415,000 gallons in 1959, to 11,112,000 gallons in 1960, which was a decrease of 3.1 percent from 1958 to 1959, and a decrease of 2.7 percent from 1959 to 1960.[72] A tax increase in Washington on April 1, 1959, resulted in a price increase of slightly over 4 percent per fifth of distilled spirits.[73] Consumption in that state increased by 7.4 percent from 1958 to 1959, and by 3.9 percent from 1959 to 1960.[74] Based on these data, and the fact that the average increase in apparent consumption of distilled spirits in the United States was 4.1 percent between 1959 and 1960,[75] it appears

68. *Ibid.*, p. 45.

69. Gallonage sales were 1,731,000 in 1957 and 1,579,000 in 1958, which represents an 8.8 percent reduction in consumption. Source: *Op. cit., Apparent Consumption.*

70. Price data supplied by the Licensed Beverage Industries.

71. *Op. cit., Annual Statistical Review,* p. 39.

72. *Op. cit., Apparent Consumption.*

73. Price data supplied by the Licensed Beverage Industries.

74. *Op. cit., Apparent Consumption.* (per capita consumption in Washington was 1.17 gallons in 1958, 1.24 gallons in 1959, and 1.27 gallons in 1960. Source: *Apparent Consumption.*)

75. *Op. cit., Annual Statistical Review,* p. 39.

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that the demand for distilled spirits in Alabama was slightly elastic; but that the demand for distilled spirits was relatively inelastic in Ohio. No definite conclusions can be based on the data presented in this section since many determinants of changes in consumption, such as population changes, and changes in income and employment were not taken into consideration.

Even though, in an earlier study, this writer agreed with McKenna and Boddy that the demand for distilled spirits is relatively elastic, the evidence available does not appear to support this, or any other claim with respect to price elasticity of demand for distilled spirits.

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APPENDIX D

Retail prices of the Nation's 18 leading brands of

	Seagram 7 Crown	Seagram V.O.	Canadian Club	Old Crow 86°	Imperial	Jim Beam	Calvert Reserve or Extra
Resale Price Maintenance							
New York	$4.99	$6.65	$6.55	$5.45	$4.50	$5.10	$4.99
New Jersey	4.89	6.49	6.45	5.30	4.40	—	4.89
Delaware	4.50	6.25	6.10	4.75	4.10	4.60	4.55
Minnesota	4.85	6.50	6.45	4.99	4.55	4.85	4.75
California	4.89	6.50	6.45	4.99	4.49	4.89	4.89
Massachusetts	4.85	6.45	6.35	5.19	4.45	4.90	4.85
Indiana	4.90	6.55	6.50	5.00	4.45	4.90	4.90
R.P.M. & Minimum Markup							
Connecticut	4.95	6.69	6.60	5.29	4.55	4.97	4.95
Kentucky	4.75	6.25	6.25	4.85	3.95	4.85	4.75
Tennessee	4.95	6.55	6.50	4.99	4.55	4.94	4.85
Rhode Island	4.89	6.54	6.21	5.13	4.42	—	4.89
Minimum Markup							
Arkansas	5.27	6.99	6.94	5.50	4.82	5.25	5.27
Georgia	5.45	7.00	7.00	5.60	4.95	5.40	5.45
Kansas	4.68	6.41	6.29	4.95	4.25	4.65	4.61
New Mexico	4.99	6.79	6.68	4.99	4.53	4.99	4.99
"Fair Trade"							
Arizona	5.00	6.79	6.78	5.45	4.79	5.00	4.99
Colorado	4.95	6.99	6.35	4.99	4.19	4.89	4.95
Florida	3.89	5.69	5.69	3.99	3.69	3.99	3.89
Illinois	4.29	6.10	5.09	3.79	3.29	3.79	3.69
Louisiana	3.75	5.75	5.75	4.00	3.50	4.00	—
Maryland	—	—	5.41	5.19	—	4.08	3.96
Nevada	4.75	6.40	6.40	4.99	4.35	4.79	—
North Dakota	4.95	6.50	6.20	4.75	4.25	5.00	4.95
Oklahoma	4.81	6.44	6.31	4.70	4.40	4.75	4.81
South Dakota	5.25	6.90	6.90	5.35	4.70	5.25	5.25
Wisconsin	4.29	6.50	5.85	4.35	3.69	3.85	—
Wyoming	4.60	6.25	6.30	4.75	—	4.85	4.60
Monopoly (State-Owned Stores)							
Alabama	4.70	6.65	6.60	4.90	4.25	4.85	4.70
Idaho	4.70	6.65	6.60	4.95	4.35	4.95	4.70
Iowa	4.11	5.87	5.78	4.32	—	4.31	4.12
Maine	4.15	5.95	5.95	4.45	3.80	4.35	4.15
Michigan	4.36	6.20	6.13	4.59	3.95	4.52	4.36
Montana	4.60	6.60	6.55	4.80	4.15	4.80	4.60
New Hampshire	3.80	5.30	5.35	4.00	3.45	3.70	3.75
North Carolina	4.05	5.75	5.65	4.25	3.65	4.20	4.05
Ohio	4.19	5.81	5.87	4.41	3.83	4.41	4.20
Oregon	4.90	6.65	6.60	5.10	4.50	5.10	4.90
Pennsylvania	4.99	7.14	7.07	5.27	4.56	5.27	4.99
Utah	4.60	6.55	6.50	4.85	4.20	4.85	4.60
Vermont	4.10	5.30	5.30	4.30	3.85	4.25	4.10
Virginia	4.05	5.80	5.75	4.25	3.65	4.15	4.05
Washington	5.05	7.00	6.95	5.30	4.60	5.30	5.05
West Virginia	4.25	6.25	6.15	4.50	3.80	4.45	4.25
Free Trade							
Washington, D. C.	3.49	4.99	4.99	3.39	3.18	3.49	3.49
Missouri	3.79	5.29	5.29	3.88	3.39	3.88	3.88
Nebraska	4.45	5.49	5.49	4.50	3.95	4.25	4.50
Texas †	4.49	5.99	5.99	4.59	3.79	4.59	4.49

* Alaska, Hawaii, Mississippi and South Carolina omitted.

† The prices listed in Texas are Dallas prices. Lower prices obtained in Houston, as may be seen on chart 1, p. 4, *supra*.

NOTE: Prices are based upon information supplied to the Moreland Commission by State officials in monopoly States and by large volume stores in other jurisdictions.

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whiskey in 47 jurisdictions, including New York*

Schenley Reserve	Early Times	Ancient Age	Corby's Reserve	Fleischmann Preferred	Ten High	Old Taylor	Cutty Sark	Four Roses	J & B	Kentucky Gentleman
$4.99	$5.45	$5.95	$4.49	$4.55	$4.50	$5.95	$7.11	$5.19	$7.09	$4.79
4.89	—	6.55	—	4.40	4.35	5.70	6.99	4.99	7.15	4.79
4.55	4.98	4.95	4.10	4.02	3.99	5.35	6.75	4.75	6.85	4.35
4.75	4.99	4.99	4.30	4.59	4.55	5.69	7.35	4.95	7.59	—
—	5.27	4.99	4.49	4.59	3.99	5.75	7.25	—	—	4.77
4.85	5.29	5.29	4.45	4.45	4.50	5.61	6.88	4.99	6.95	4.50
4.90	5.25	5.20	4.45	—	—	5.65	7.45	5.00	—	—
4.95	5.29	5.39	4.49	4.57	4.55	5.85	6.76	5.10	7.25	4.95
—	4.99	4.85	—	—	—	6.49	7.25	4.85	7.39	4.55
4.39	5.29	5.15	—	—	4.45	5.78	7.58	—	7.45	4.80
4.89	—	—	4.89	4.43	4.38	6.75	7.10	4.96	7.20	—
5.27	5.65	5.60	—	—	4.70	6.17	7.65	5.29	7.85	5.15
5.45	5.75	5.70	4.90	5.15	4.85	6.30	7.85	5.50	7.85	5.45
4.36	5.10	4.95	—	4.36	4.25	5.55	6.82	—	—	4.69
4.99	4.99	4.99	4.50	4.58	4.30	5.89	7.83	5.14	7.78	4.77
5.00	5.45	5.49	4.63	4.67	4.34	5.85	7.45	5.15	7.34	—
4.95	4.99	4.99	—	4.60	4.19	5.79	6.79	4.89	6.79	—
3.79	4.49	3.99	3.39	3.79	3.59	4.39	6.19	3.88	6.39	3.59
3.59	3.98	3.79	2.99	3.49	3.19	4.39	5.89	3.79	5.98	3.49
—	4.00	4.00	—	—	3.50	4.75	7.00	—	—	—
3.99	4.33	4.29	3.52	3.69	3.57	5.78	5.83	4.13	5.97	3.84
—	4.99	4.99	—	4.49	3.99	5.69	7.35	—	7.39	3.58
4.75	5.00	4.75	4.50	4.65	4.00	5.75	7.55	5.00	7.55	—
—	5.18	4.75	—	—	4.35	5.78	6.99	4.90	7.19	4.79
5.25	5.35	5.35	4.60	4.60	4.70	6.25	8.10	5.35	—	—
4.08	4.45	3.85	3.79	3.59	3.69	4.88	6.30	4.08	—	—
4.60	5.10	4.95	—	—	—	5.35	6.90	4.32	6.52	—
4.70	5.25	5.15	4.25	—	4.25	5.55	7.25	4.85	7.30	4.65
4.70	5.25	5.15	4.35	4.45	5.00	5.55	7.10	4.90	—	—
4.10	4.61	4.50	3.70	3.81	3.69	4.87	6.35	4.24	6.43	4.09
4.10	4.80	4.65	3.80	4.65	3.75	—	6.40	4.30	6.55	—
4.36	4.89	4.59	3.95	4.06	3.94	5.17	6.67	4.50	6.76	4.23
4.60	5.10	5.00	4.15	4.25	4.15	5.40	7.10	4.70	7.25	—
3.80	4.30	4.20	3.45	4.25	3.43	4.55	5.75	3.85	5.80	3.80
4.05	4.55	4.45	3.65	3.75	3.65	4.80	—	4.15	6.30	4.00
4.19	4.65	4.59	3.81	3.79	3.81	4.94	6.61	4.32	6.52	4.18
4.90	5.40	5.10	4.50	4.60	4.50	5.65	7.00	5.05	7.15	4.85
4.99	5.65	5.27	4.55	4.66	4.54	5.95	7.52	5.15	7.68	4.99
4.60	5.15	4.85	4.20	4.30	5.45	5.45	7.00	4.75	7.10	—
4.10	4.50	4.40	3.85	3.85	—	4.70	5.60	4.20	5.70	—
4.00	4.55	4.40	3.60	3.70	—	4.80	—	4.15	6.45	4.00
5.05	5.65	5.30	4.60	4.75	4.60	5.95	7.35	5.20	7.50	5.00
4.25	4.85	4.75	3.80	3.90	—	5.15	6.85	4.40	7.00	4.20
3.49	3.79	3.59	2.99	3.18	3.18	4.29	5.59	3.69	5.95	3.39
3.79	3.88	3.88	3.33	3.49	3.39	4.39	6.19	3.99	5.99	—
4.50	4.50	4.65	3.95	4.29	4.10	5.95	6.79	4.50	5.90	—
4.39	4.59	4.59	—	4.49	3.89	4.99	6.95	4.59	6.98	4.59

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APPENDIX E

Report of February 4, 1946 from Arthur F. Robertson to John F. O'Connell, Chairman of the SLA, on conferences held with representatives of the liquor industry.

February 4, 1946.

MR. J. F. O'CONNELL, *Chairman:*

Submitted herewith is a report on conferences held with various branches of the Liquor Industry with regard to the necessity, now or in the near future, of promulgating rules and regulations aimed at preventing the sale of alcoholic beverages in violation of *fair trade* contracts.

Discussions were first held with representatives of the four major distillers. Starting last November, I met with the following listed persons, representing firms as noted in each instance. Since their views and general attitude toward fair trade contracts, and the enforcement thereof, were so nearly alike, I shall treat these individual discussions as one:

Mr. T. M. Balfe Mr. I. D. Hall	National Distillers
Mr. S. J. Hamilton Mr. M. H. Frank	Hiram Walker, Inc.
Mr. B. C. Ohlandt Mr. M. J. Halpern	Schenley Distillers
Gen. Frank Schwengel Mr. F. J. Lind Mr. Ezra Cornell	Seagram Group

With the exception of the last mentioned, the other distillers reported Fair Trade Contracts presently in effect and under enforcement. Subsequent to our first meeting, the Seagram representative advised me that his companies would put Fair Trade Contracts in effect, on all lines, within two weeks of any announcement by the New York State Liquor Authority to the effect that such contracts would be enforced.

The Distillers' representatives were agreed that price wars are bad for the industry as a whole; that if each distiller or national supplier kept this thought constantly in mind and in effect, there could be no price wars. Whereas these representatives were agreed that a price war was not imminent in the New York area on standard

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goods, there was some small difference of opinion as to the possibility of a price breakdown on so-called "distress goods", by specific reference, rums and grain spirit gins. Three of the representatives felt that such price breakdown could happen as a natural consequence of an over supply on these items and the reluctant acceptance by the public, so long as standard goods are available. Another representative felt serious price breakdown on distress goods could be effectively controlled under provisions of the Hollowell Bill.

The Distiller representatives were agreed that

(a) Fair trade is a desirable method of operating in the liquor industry;

(b) That some agency outside the industry should enforce fair trade contracts where such are in effect, either under voluntary or mandatory regulations;

(c) That the enforcement of fair trade contracts properly falls under present State Control.

Other opinions expressed by these representatives individually, in line with the general discussion, are:

(1) That no price war is imminent because of the limited supply of standard goods, without which you could not create a sustained public scramble for liquor of any type.

(2) That price wars or even sustained price cutting cannot be effective without artificial encouragement from the supplier of any given brand or line.

(3) That distillers with national distribution cannot post prices so low locally as to create a price war, on any given brand or line, without affecting the permanent price set-up of this supplier throughout the nation.

(4) That when Fair Trade price regulations are put into effect in this State, O.P.A. maximums be established as the minimum prices.

(NOTE: This opinion was expressed too late in our conferences to get an expression from three other distiller representatives. This suggestion is covered hereinafter in this report as being opposed to by other groups.)

(5) That Fair Trade contracts cannot presently be effectively enforced by brand owners because of the cumbersome method of bringing a violator to justice. That penalties are not severe enough to discourage and stop persistent price chisellers.

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(6) That there is a noticeable and natural reluctance of sales departments to cooperate effectively with legal departments in the enforcement of Fair Trade contracts.

(7) That among the regulations to be adopted there should be a strict rule on the full and correct identity on each brand case, to include a number so that such could be traced, in case of a price war outbreak.

* * * * *

On November 26, 1945, a meeting was held in these offices with representatives of package store associations, as listed herewith:

Metropolitan Package Store Association, Inc.
New York City

Chemung Valley Package Stores Association, Inc.
Elmira, New York

Genesee Valley Package Store Association, Inc.
Rochester, New York

Oneida County Package Stores Association, Inc.
Utica, New York

Capitol District Package Stores Association, Inc.
Albany, New York

Western New York Package Store Association, Inc.
Buffalo, New York

Associated Liquor Stores of Dutchess County
Poughkeepsie, New York

White Plains Association—Affiliated with the
Metropolitan Package Stores Association.

This conference was called at the request of several of the package store associations, and was attended by twenty representatives, including counsel of the associations listed. During open discussion, the following items were generally agreed upon, and are so indicated in the stenographic record of the meeting.

(1) That price cutting presently is statewide among the known "price chiselers".

(2) The price cutting, from 25 cents to 50 cents per bottle, is in effect with these dealers, on standard brands, under Fair Trade contracts, and that such information has been brought repeatedly to the attention of the brand owners, without any effective results.

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(3) That such price cutting is practiced by these dealers to effect tie-in sales of off brand merchandise.

(4) That rums and grain spirit items are being offered at prices slightly above dealers cost.

(5) That price cutting is widespread on standard brands of blended whiskies most generously distributed; that this is a certain indication that a price war will result as soon as stocks return to normalcy.

(6) That these associations, representing, according to their own statements, approximately 90% of the licensed retail liquor dealers, have no confidence in the intention or ability of distillers and other brand owners to avoid price wars or to maintain any discipline among certain known price chiselers, and that under present Fair Trade agreements these dealers, attempting to abide by stipulated prices, are at a severe handicap, and that they unanimously agree that provisions of the amendment to the Alcoholic Beverage Control Law, relating to Fair Trade price regulations, be made mandatory and effective at the earliest possible time.

The representatives of these Associations, in private meeting, by recess of this same conference, adopted and then offered the following as proposed rules and regulations:

"*Rule One:* No brand of any alcoholic beverage, except beer, shall be distributed and sold in the State of New York except pursuant to a Fair Trade contract, entered into in accordance with the provisions of Article 24a of the General Business Law.

Rule Two: Filing and Mailing of Contract: The owner of any brand of alcoholic beverages now being distributed and sold in the State of New York shall on the 20th of the month following the promulgation of these regulations or in case of a new alcoholic beverage being introduced by a new brand owner on or before the 20th of the month, file a copy of their Fair Trade Contract with the State Liquor Authority together with a schedule of consumer resale prices by the bottle which shall be uniform throughout the State, which resale prices are to take effect on the first day of the following month. On the same day of filing with the Authority, a copy of the Fair Trade Contract and schedule shall be sent by every brand owner to every retailer for consumption off the premises in the affected trading area by registered mail.

Rule Three: Amendments: A Fair Trade Contract may be altered or amended by filing such alterations or amendments

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with the Authority on or before the 20th of any month to become effective on the first of the following month. The mailing of the amendment or alteration shall be the same as provided for in Rule Two.

Rule Four: Resale prices: The retailer for off-premises consumption shall sell at the stipulated prices only.

Rule Five: Close outs for the purpose of discontinuing delivery of brand: A retailer for off-premises consumption shall not make a close out sale of alcoholic beverages for the purpose of discontinuing delivery of such alcoholic beverages at less than the stipulated resale price or prices without having a close out permit from the Authority. He must show the Authority that, first, he has had the merchandise for six months; second, he has offered to return the merchandise to the vendor and producer ten days before applying to the Authority; and, third, he has not brought the merchandise into the State for the purpose of conducting a close out sale. Notice that the sale is a close out must be given to the public and any advertising must show the quantity offered and the close out permit number in letters and figures no smaller than the largest used in such sign posters or advertising. If the application for a close out sale is denied, the Authority shall, either, first, compel the vendor or producer to retake such merchandise if in good condition at the market price or invoice price, whichever is lower or, second, require the licensee to sell at the stipulated resale price. Where a brand has been closed out with the permission of the Authority, the retailer shall not repurchase the same brand for one year after the close out sale and then only after receiving the permission of the Authority on good cause shown.

Rule Six: Damage or deterioration: A special permit to sell any deteriorated alcoholic beverages at less than the stipulated resale price shall be secured from the Authority, and the Authority shall not issue the permit unless convinced that the facts warrant the sale. The public are to be given similar notices as provided for close out sales under Rule Five.

Rule Seven: Fluctuation of Resale Price: No brand owner, licensee or group of licensees, shall cause any fluctuation in the stipulated resale prices of any brands which practice in the opinion of the Authority shall disrupt the orderly distribution of alcoholic beverages and tend to defeat the purpose of these regulations by fostering and promoting internal arguments.

Rule Eight: Private Brands: Brands which are owned exclusively by one retailer and sold within the State by such retailer are excepted from the operations of these rules and regulations.

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Rule Nine: Penalties: For the violation of these rules and regulations, the Authority may suspend, cancel or revoke a license as follows: For a first offense, not exceeding ten days' suspension of license. For a second offense, not exceeding 30 days' suspension of license. And for a third offense, the Authority may suspend, cancel or revoke the license. That is our recommendation to the Authority insofar as the regulations are concerned."

After the proposed regulations were put on the record, further discussion ensued and the following points were made by individual representatives, without challenge from other representatives, and therefore taken as an expression of those present:

(a) Accused distillers of reimbursing certain large retailers for expenses incurred in defending court actions on violations of Fair Trade Contracts.

(b) That distillers and other brand owners, or exclusive distributors, are not interested in maintaining Fair Trade Contract provisions and that such are now devising ways and means of evading any stipulated regulations, through certain trusted and favored retail outlets.

(c) That certain suppliers purposely supply selected retail outlets with brands of whiskies labeled and intended for bar use only, for the purpose of circumventing Fair Trade agreements in effect on the same brand under a different colored label.

(d) That large New York City retailers have circularized industrial plants Up-State offering "bargains" in whiskies and rums, resulting in solid express car shipments to such areas; that such type of inducements should be regulated against, in addition to price control.

(e) That forced tie-in sales by suppliers to bars and grills, has resulted in such licensees surreptitiously disposing of these off-brand items, also rums and wines thus purchased, over the bar, for off premise consumption, at prices less than cost, thus disrupting the demand for such items in any given community.

(f) That along these same lines, certain Country Clubs are being favored in quantity shipments of scarce items, provided they accept from the suppliers large quantities of rums, wines and other items of small acceptance at stipulated prices, and that these clubs dispose of the unwanted items at cost or less, to members, thus disrupting whatever demand there may be among the retailers for these same items which these retailers are required to accept from the suppliers, and are expected to resell at prices under Fair Trade Contracts.

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(g) That large New York City department stores use prominent newspaper space to announce plentiful supplies of scarce items and urge case lot sales; that provision be made in regulations to bring such advertising under control to see that same is not misleading; that such scarehead liquor advertising disrupts sales and control in rural communities.

Subsequent to this conference, various representatives of the retailers supplemented their conference statements on price cutting, by forwarding newspaper advertisements and circulars, from several cities, each of which contains one or more items under present Fair Trade Agreements, quoted at a lower price. The Metropolitan Package Store Association, Inc., sent a letter dated December 4, 1945, citing a report submitted by a shopping agency indicating that 36 stores in the Counties of Bronx, Kings, New York, Queens and Westchester were selling one or more whiskies under Fair Trade Contracts at prices lower than those stipulated and agreed upon.

* * * * *

At the request of Mr. Morris O. Alprin, Counsel to the Greater New York Wholesale Liquor Dealers Association, Inc., a meeting was held in the State Liquor Authority offices on December 7, 1945, attended by the following:

Mr. Alprin

Mr. Irving Koerner, President of the Association and associated with R. C. Williams Company

Mr. Morris Scheinick, President of Alpine Wine and Liquor Corporation

Mr. Sam Aronowitz, Counsel for the Hudson Valley Distributors, Inc.

Mr. Harry Levinthal, associated with the firm of M. Lichtman & Company, Syracuse, New York

Mr. William Toussaint, representing Hudson Valley Distributors, Inc. and associated with Rodgers Liquor Company, Inc., Albany, New York

This group were unanimously of the opinion that the New York State Liquor Authority should promulgate rules and regulations for price control, under Fair Trade Contracts, at the earliest possible time.

They were also of the opinion that all levels of the liquor industry should be brought under such regulations.

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Messrs. Alprin and Ar owitz, on behalf of the two associations listed, such associations said to represent a majority of New York State liquor wholesalers, presented a memorandum in support of their proposal that the State Liquor Authority promulgate rules and regulations with reference to Fair Trade agreements and action by the Authority against violators. The memorandum, in its entirety, is made a part of this report. Quoted from the mentioned memorandum, is the following with regard to any proposed rules and regulations:

> "One of the first points for the Authority to consider is whether or not, under such rules and regulations, fair trade agreements should be *voluntary or mandatory*. There is much to be said in behalf of each of these propositions.
>
> It may be argued that many brand owners would not enter into fair trade agreements if the Authority adopted rules and regulations with respect to *voluntary* agreements only. It may also be argued that where fair trade is mandatory as, for example, in New Jersey, operations and business conditions are much cleaner. This, of course, is a question of policy for the Authority to determine. It might very well provide rules and regulations based on voluntary fair trade agreements in the first instance, and, if the situation thereafter required it, then further rules and regulations might be adopted making such agreements mandatory. Under a system of voluntary agreements, the Authority would be able to ascertain the extent and amount of cooperation from brand owners, and if this was obtained there would be no necessity for requiring mandatory fair trade agreements.
>
> Another question would be whether or not *all items* should be covered by fair trade agreements. There is the argument that private brands belonging to one retailer and not in competition with any other retailer should be exempt. This may be fraught with peril to the entire program. It would enable large volume stores, when merchandise is available in quantities, to make up their own brands and advertise them extensively on the basis of price.
>
> There is also the problem with respect to the so-called wartime items, that is, imported Spanish and Portuguese brandies, imported wines, rums, etc. There is comparatively a large inventory of such items in the hands of manufacturers, importers, wholesalers and retailers. It may be argued that to put such items on fair trade would make them practically unsaleable. On the other hand, however, it might very well be argued that such merchandise would be purchased by the public as and when

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required, regardless of price, that permitting distress prices would not properly follow the first guide post of the Legislature, that it would not foster and promote temperance. Again, here is is a question of policy for the Authority to decide.

The Authority might consider a proposal that where, under a fair trade agreement, an injunction or court order is obtained against a retailer a certified copy in such proceeding might be prima facie evidence against the offending retailer on the basis of which the Authority could institute proceedings against the violating retailer. In such instance, the investigation, proof of sale, and decision of the court could be available to the Authority without further investigation or administration efforts by it.

The Authority might also consider a proposal that all fair trade contracts should be filed with it. Likewise, all changes or amendments to such contracts.

The Authority might also consider a proposal that all advertising based on price, such as newspaper advertisement, circulars, hand-bills, etc. be submitted to the Authority so that same might be checked against any fair trade contracts on file with the Authority."

The wholesalers' representatives request that, when the Authority adopts rules and regulations with respect to Fair Trade and action against violators, it submit such proposed rules and regulations to the various branches of the industry for study, comment and suggestions. They feel that such procedure would insure the Authority the benefit of business practices and show from a practical and operating viewpoint how such proposed rules and regulations might be altered or changed, with a view to better administration and successful operation.

* * * * *

On December 3, 1945, Mr. E. S. Underhill, Jr., President of the Urbana Wine Company, Hammondsport, New York and also President of the Finger Lakes Wine Growers Association, together with Mr. Charles A. Winding, Attorney, attended a conference in these offices, on the subject of Fair Trade practices and regulations.

Mr. Underhill, speaking for members of the aforementioned association, went on record as being unalterably opposed to the Authority's promulgating any rules or regulations, under Chapter 687, which would prohibit or regulate the sale of alcoholic beverages, in violation of the provisions of Fair Trade Contracts, pursuant to the provisions of Article 24A of the General Business Law.

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Mr. Underhill contended that the State Liquor Authority had no power under last year's amended legislation to make fair trade practice contracts mandatory. That authority given is permissive rather than mandatory. That the brand owners should determine, individually, whether they wish to enter into Fair Trade Contracts, to cover their products in the market, and that his Association is opposed to any such extreme of governmental regulation.

Mr. Underhill argued that Fair Trade practices tended to increase rather than merely to maintain retail prices. That certain large retailers who are now criticized for their sales practices, thought to be detrimental to smaller independents, would purchase alcoholic beverages under private label and sell them at any price they desire.

This spokesman urged that if the Authority deems it necessary to take action under Chapter 687 that it limit itself to the enforcement of voluntary fair trade contracts.

Mr. Underhill came here again on January 25, 1946 and reiterated the objections of his Association members to mandatory regulations by the Authority.

* * * * *

On January 5, 1946, the following listed persons, representing the New York Importers and Distillers Association, Inc., conferred here on the subject of Fair Trade price regulations as affecting imported wines, liquers and specialty items:

Mr. Joseph Garneau Ringwalt, Chairman of Association and also President of Joseph Garneau Company, Inc.

Mr. Joseph G. Ringwalt, Jr.

Mr. I. M. Bomba, Vice-President of the Association and an officer of Schieffelin & Company.

Mr. Lester H. Schreiber, Counsel.

Mr. Ringwalt, as spokesman for this Association, went on record as opposed to any mandatory price regulations and said that if the Authority finds it necessary, in order to control orderly distribution of alcoholic beverages, it should confine itself to the supervision and enforcement of voluntary fair trade contracts.

Mr. Ringwalt, speaking as an individual, stated that none of the imported wines or specialty items handled by his firm have ever

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figured in price wars. He questions that the State Liquor Authority will ever have the personnel to enforce fair trade agreements which would be entered into by persons under compulsion. He states further that mandatory fair trade would serve as an instrument by which groups in the industry could dictate by embargoes the profit margins at which brands, other than those owned by retailers, would be sold, and that enforcement by the State Liquor Authority would support these combinations in restraint of trade. He cited that most State Liquor Control Boards encourage the purchase of light wines as a contribution to temperance, and that it would be manifestly unfair to require fair trade agreements on sale by the bottle, as applicable to a single case or more, or anticipating sales in quantity which would be applicable by the bottle.

Mr. Ringwalt proposes that should the State Liquor Authority find that conditions with respect to promotion of temperance, orderly distribution, or the interests of the consumer, require the use of its discretionary power

(1) Regulations should be applicable only to those brands whose owners are found to be unable or unwilling to obtain orderly distribution; or

(2) Be applicable to types or kinds of beverages involved in disorderly distribution.

Subsequent to this conference, Mr. Schreiber, Counsel, filed a memorandum titled, "Memorandum in Relation to Promulgation of Fair Trade Regulations Pursuant to Chapter 687 of the Laws of 1945." The memorandum as attached to this report, states that it represents the views of a majority of the members of the New York Importers and Distillers Association, Inc., and that it is not intended to represent the views of domestic distillers as might be implied by the name of the Association, except such branches of their business which relate to the importation and sale of foreign alcoholic beverages.

Mr. Schreiber cites that a poll of members was taken in May 1945 and that sixteen members were opposed to mandatory issuance of fair trade agreements on all brands of alcoholic beverages offered for sale, and seven members were in favor of such.

The aforementioned memorandum argues that:

(a) The evils of price competition can be eliminated by means other than compulsory fair trade agreements.

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(b) Mandatory agreements stifle individual initiative.

(c) Fair trade will increase the cost to the consumer (based on Federal Trade Commission report that under fair trade agreements, manufacturers and distributors are coerced into allowing larger mark-ups by retailer groups).

(d) Mandatory fair trade is not an absolute cure (that it will not prevent "deals" via private brands).

(e) Mandatory Fair Trade cannot be administered successfully without the cooperation of the brand owner.

(f) The New York State General Business Law does not permit sales above a so-called minimum resale price (that the effect of mandatory agreements would prevent higher prices on special items and thus affect personal service to the customer).

Mr. Schreiber's memorandum proposes that when in the discretion of the State Liquor Authority trade conditions require some regulation of resale prices, such regulations be restricted to voluntary fair trade agreements plus the prohibition against the advertising of prices on brands not subject to such agreements.

Subsequent to the conference first held with the representatives of the Schenley Corporation, Mr. Paul Dubonnet, President of the Dubonnet Corporation, and locally affiliated with Schenley Import Corporation, accompanied by Mr. Morris Halpern, Counsel, came here to request immediate and mandatory fair trade agreements, because of the "breakdown" in prices on Dubonnet Wine.

Mr. Dubonnet was emphatic in stating that he wants his product maintained at the minimum now covered by Fair Trade Contracts. He later cited five metropolitan retailers who were selling below the stipulated prices.

Respectfully submitted,

A. F. Robertson
Executive Assistant

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EXHIBIT F, ANNEXED TO AFFIDAVIT OF THOMAS F. DALY

FOR IMMEDIATE RELEASE, MONDAY, FEBRUARY 10, 1964

ROBERT L. MCMANUS, PRESS SECRETARY TO THE GOVERNOR

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany

February 10, 1964

TO THE LEGISLATURE:

In the years since the national repeal of Prohibition, the administration of the State's liquor control law has been marked by periodic instances of corruption and favoritism, leading to a loss of public confidence and disrespect for the law.

Following indications of misconduct in 1962, I promptly appointed a Moreland Commission, composed of three eminent lawyers with distinguished records of public service. I commissioned them to make a thoroughgoing reappraisal of the law in the light of the State's experience and in the light of current social and economic conditions. The Commission has now submitted the first comprehensive and objective analysis of this important subject undertaken anywhere in the Nation since Prohibition was repealed. This analysis is the result of careful research and thorough public hearings.

The Commission reports the following:

(1) That corruption and favoritism have been facilitated by a statutory approach to liquor control which is out of keeping with modern life and contrary to regulatory experience in other fields.

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(2) That while our liquor control law was conceived to promote temperance and respect for the law, the facts demonstrate that the prescribed system has failed to accomplish these worthy objectives; some of the controls and regulations piled up under the law through the years have in practice defied objectivity, encouraged corruption, added nothing to promote temperance and have served to breed public disrespect for the law.

(3) That the liquor industry has acquired the dominant hold in a field properly regarded as one requiring public regulation; no other industry has its economic interests so uniquely favored with statutory protections; and it is contrary to the public interest to have the regulated industry in such a dominant role.

In making its reports and recommendations, the Moreland Commission has set as its goals:

—Eliminating unnecessary statutory restrictions which have served as an encouragement to corruption, favoritism and hypocrisy in liquor control.

—Bringing justice to the consumer by putting to an end the artificial devices whereby the liquor industry has received uniquely beneficial treatment at the consumer's expense.

I believe that the Moreland Commission has made a tremendous contribution to public understanding of the problems of liquor control. I am transmitting to your Honorable Bodies three reports of the Commission with my full support of its recommendations. I urge your favorable consideration of these reports and your enactment of legislation at this Session carrying out the Commission's recommendations.

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A. *Restaurant Licenses*

1. *Commission Findings.* The Moreland Commission's findings indicate that:

—The requirement of present law that only restaurants may sell liquor by the drink has resulted in widespread abuses as well as economic hardship to licensees.

—Most of the establishments in the State with so-called "restaurant" licenses are in fact bars only. Less than 25 percent of their gross revenues are derived from the sale of food—a percentage substantially less than the required minimum.

—This widespread and notorious violation of present law has induced many licensees to engage in petty dishonesty and to falsify their books and records of food sales. The present law cannot be enforced because many licensees cannot afford a full-time chef, high rents for unused kitchen and dining space, expensive outlays for unneeded equipment and the costs of wasted food.

—At the same time, the present law specifically rejects any requirement that "food be sold or purchased with any beverage." It thereby recognizes that individuals drink alcoholic beverages separately from their meals.

—This hypocrisy and encouragement of fraud must be ended. Justice should be restored to licensees conducting establishments for on-premises consumption.

2. *Commission Recommendations.* On the basis of its findings, the Moreland Commission recommends that:

—The law be amended to eliminate present provisions limiting licenses for on-premises consumption to